

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) 2:14-CR-93
)
JACK WEICHMAN,)
)
Defendant.) Vol. 1 of 2

TRANSCRIPT OF SENTENCING HEARING
May 3, 2018
BEFORE THE HONORABLE PHILIP P. SIMON
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE GOVERNMENT:

DIANE L. BERKOWITZ
U.S. Attorney's Office
5400 Federal Plaza, Suite 1500
Hammond, Indiana 46320
(219) 937-5500

FOR THE DEFENDANT:

JACKIE M. BENNETT, JR.
Taft, Stettinius & Hollister, LLP
One Indiana Square, Suite 3500
Indianapolis, Indiana 46304
(317) 713-3500

MICHAEL Z. GURLAND
The Gurland Law Firm, LLC
414 North Clay Street
Hinsdale, Illinois 60521
(312) 420-8812

ALSO PRESENT: David Beier, U.S. Probation
Brian Visalli, IRS
Jason LeBeau, FDIC-OIG

1 (The following proceedings were held in open court
2 beginning at 10:19 a.m., reported as follows:)

3 **DEPUTY CLERK:** All rise.

4 **THE COURT:** Good morning, everyone. You can be
5 seated.

6 We are on the record in 2:14-CR-93. The case is United
7 States versus Jack Weichman. We are here today for the
8 sentencing of Mr. Weichman. He is here with his lawyers,
9 Mr. Gurland and Mr. Bennett. Ms. Berkowitz is here on behalf
10 of the government.

11 Mr. Weichman appeared before me back on October 28th of
12 2016, and he pled guilty to five counts of the 36-count Second
13 Superseding Indictment. Count 1 was for bank fraud, Count 9
14 was bank fraud, Count 21 was a bankruptcy fraud relating to
15 concealment of assets, Count 28 was a wire fraud, and Count 34
16 was a tax count, a false returns count.

17 I adjudged him guilty on his pleas of guilty at that time
18 and ordered the preparation of a presentence report. Now, way
19 back in July of 2017, I received a copy of that report; and it
20 has been sitting around for about nine months now. I have
21 studied the report and the addendum; but for reasons that are
22 entirely unclear to me, a week before the sentencing, I'm hit
23 with a whole host of issues that are not reflected in the
24 presentence report that has been around for nine months. I
25 don't understand that.

1 But I have reviewed the government's sentencing
2 memorandum, that's Document 268, and the defendant's sentencing
3 memorandum, that's Document 270. I received an e-mail from
4 Ms. Collins, my courtroom deputy, that was sent to Mr. Beier
5 from Ms. Berkowitz a couple days ago. I have read that. I
6 received a victim impact statement from a man named
7 Dr. Lazzaro, and I have a lot of questions about that. Then I
8 received a whole slew of letters that were written on the
9 defendant's behalf. I have reviewed that material as well. So
10 from my perspective, that's the material I have before me for
11 purposes of sentencing.

12 Mr. Bennett, do you agree with me on that?

13 **MR. BENNETT:** Yes, Your Honor.

14 **THE COURT:** Ms. Berkowitz?

15 **MS. BERKOWITZ:** Yes, Your Honor.

16 **THE COURT:** All right. Can I speak to you for
17 purposes of the hearing today or Mr. Gurland?

18 **MR. BENNETT:** Well, depends on what the question is.

19 **THE COURT:** Okay. Well, I will start with you. If
20 you want to defer to Mr. Gurland, that's fine. Mr. Bennett,
21 did both you and your client receive a copy of the presentence
22 report and the addendum sometime before the hearing today?

23 **MR. BENNETT:** Yes, Your Honor.

24 **THE COURT:** Mr. Weichman, did you, in fact, have a
25 chance to thoroughly go over the contents of that presentence

1 report with your lawyers sometime before the hearing today?

2 **THE DEFENDANT:** Yes.

3 **THE COURT:** All right. Ms. Berkowitz, I assume you
4 also received the report from July of last year?

5 **MS. BERKOWITZ:** I did, Your Honor.

6 **THE COURT:** The presentence report and the addendum
7 are placed in the record under seal. It is directed that if an
8 appeal is taken, counsel on appeal shall be permitted access to
9 the sealed report. It is further directed that counsel on
10 appeal are not permitted access to the recommendation section
11 of that report.

12 The addendum to the presentence report sets forth -- I
13 think there's seven objections that have been raised by the
14 parties on various guideline issues.

15 Does the addendum accurately identify what's in dispute?
16 Mr. Bennett?

17 **MR. BENNETT:** I'm not sure. I think we have agreed
18 on a lot of things that narrow the scope of that.

19 **THE COURT:** Okay.

20 **MR. BENNETT:** And only in the last couple of days,
21 Your Honor.

22 **THE COURT:** So why don't you tell me what you guys
23 ostensibly have agreed to.

24 **MR. GURLAND:** Your Honor, part of the issue is part
25 of the agreements are based on conversations I have had with

1 Agent Visalli. I have tried on six different times to get
2 Ms. Berkowitz to just talk to me so I can understand some of
3 the numbers. Mr. Bennett actually reached out to her
4 supervisor who said: She'll send you an e-mail -- send her an
5 e-mail and then she'll talk to you. She's refused to talk to
6 us. What we have agreed to, though, and I was discussing --

7 **THE COURT:** Well, how did you agree to it if she
8 didn't talk to you?

9 **MR. GURLAND:** Well, what we're withdrawing with
10 regard to waivers -- with regard to objections, we're
11 withdrawing the sophisticated means objection. We're also
12 withdrawing our objection -- or we're agreeing to the 2.4 loss
13 amount with respect to the monies taken out of Dr. Ashbach's
14 securities and retirement accounts.

15 There was an issue that Ms. Berkowitz raised in one of the
16 e-mails that we saw in the last few days regarding a purported
17 tax refund amount that she felt should be added to the
18 calculation, and that number was also in the PSR. The number
19 is wrong.

20 This is what I say: I've had conversations with
21 Agent Visalli in the last couple days, and I believe -- I would
22 think, based upon my discussions with him, the government would
23 be willing to agree that the refund amount is actually 480 --

24 What was the number?

25 **THE COURT:** Don't talk to the agent, all right. Talk

1 to me what you think it is.

2 **MR. GURLAND:** The actual number -- I believe it's
3 roughly \$458,000. It is based upon the actual tax refund that
4 Dr. Ashbach sought, the records for which Agent Visalli has.
5 We haven't been provided those.

6 **THE COURT:** How much is that amount?

7 Ms. Berkowitz, do you want to --

8 **MS. BERKOWITZ:** Your Honor, that would be contained
9 in --

10 **THE COURT:** Before you go -- I'm sorry. Before it --
11 is there anything else that you think you have agreed to?

12 **MR. GURLAND:** Well, I believe that there may have
13 been a dispute regarding the bank fraud charge that
14 Mr. Weichman spoke to, the \$209,000 loss amount. If there was
15 an objection to that, we're withdrawing that objection to that
16 loss amount.

17 And, similarly, Mr. Weichman pled to a bankruptcy fraud
18 charge. It is my understanding that for restitution purposes,
19 to the extent there's any restitution, for bankruptcy, it is
20 limited to that amount, which is \$253,000. If there was any
21 objection to the amount, we withdraw that.

22 What I was trying to discuss with Ms. Berkowitz were these
23 intended loss amounts in bankruptcy or actual loss amounts. I
24 don't understand the numbers at all, and I haven't been able to
25 get any explanation. And I probably have 20 e-mails just

1 asking to -- asking for some explanation of those amounts.

2 **THE COURT:** Okay. So, Ms. Berkowitz, do you want to
3 address any of that?

4 **MS. BERKOWITZ:** Do you want me to address anything
5 regarding conversations with counsel or is that necessary?

6 **THE COURT:** I don't really care. What I want to know
7 is what you are in agreement with or stipulated to and what I
8 need to resolve, because I have spent a lot of time studying
9 all these objections, and I'm prepared to rule on all of them.

10 So the idea that you waltz into sentencing and say, never
11 mind, you know, is a little bit irritating, frankly, because
12 I've spent a lot of time sort of preparing. You know what I
13 mean?

14 So anyway...

15 **MS. BERKOWITZ:** We would agree with counsel.
16 Yesterday they did agree that they would not challenge the
17 2.4 million -- it is \$2,417,000 that was fraudulently removed
18 from David Ashbach's retirement and brokerage accounts. They
19 have agreed to that.

20 And based on what counsel is saying today, it would appear
21 that he would agree that the concomitant tax liability as a
22 result of those fraudulent withdrawals, David Ashbach -- there
23 was a tax that he ended up paying on the withdrawals that were
24 made by the defendant, and the defendant got that money.

25 **THE COURT:** But hasn't he filed an amended return, so

1 he's going to get that --

2 MS. BERKOWITZ: He has --

3 THE COURT: Let me finish.

4 MS. BERKOWITZ: Okay.

5 THE COURT: As I understand it, he filed an amended
6 return, and he may well be compensated by the IRS.

7 MS. BERKOWITZ: That is absolutely correct,
8 Your Honor. For purposes of restitution -- we would agree that
9 for purposes of restitution that tax payment should not be
10 factored into calculating the loss as it relates to the wire
11 fraud. But the tax payment should be calculated with the loss
12 for the wire fraud based on -- to calculate the guideline, the
13 offense level, and only for that.

14 THE COURT: Okay.

15 MS. BERKOWITZ: We have come to that agreement, I
16 believe, with counsel on that. They have indicated that they
17 will withdraw their objection to sophisticated means. I
18 understand that.

19 But we still have some outstanding issues as to the loss
20 amount for bankruptcy. In the government's sentencing
21 memorandum, we identified --

22 THE COURT: I don't want argument now. I just want
23 to get what the terms of the debate are going to be.

24 So can we just march through these that are in the
25 addendum? So Objection No. 1 has been resolved by stipulation

1 of the parties, that the sophisticated means enhancement does,
2 in fact, apply.

3 Is that right, Mr. Gurland?

4 **MR. GURLAND:** Yes, Your Honor.

5 **THE COURT:** Ms. Berkowitz?

6 **MS. BERKOWITZ:** Yes, Your Honor.

7 **THE COURT:** The second objection deals with the
8 amount of the loss for the bankruptcy fraud. That's a live
9 dispute that I need to resolve.

10 Is that right, Mr. Gurland?

11 **MR. GURLAND:** Yes, Your Honor.

12 **THE COURT:** Ms. Berkowitz?

13 **MS. BERKOWITZ:** Yes, Your Honor.

14 **THE COURT:** All right. The third objection is the
15 amount of the loss as it relates to Dr. Ashbach, and as I'm
16 understanding it, the parties are now in agreement as it
17 relates to that.

18 Is that right, Mr. Gurland?

19 **MR. GURLAND:** Yes, Your Honor, with regard to the
20 2.4.

21 **THE COURT:** How about as it relates to the 850,000?
22 That's the fraudulent credit line that was obtained. That's
23 been included as a loss.

24 **MR. GURLAND:** And, Your Honor, we're still objecting
25 to that.

1 **THE COURT:** Okay.

2 **MR. GURLAND:** That amount.

3 **THE COURT:** So No. 3, it is a partial live dispute.

4 **MR. GURLAND:** Yeah.

5 **THE COURT:** Okay. So the next objection was No. 4,
6 and that relates to whether or not 2B1.1(b)(9)(B) applies. I
7 haven't heard anybody speak to that, but that looks like that's
8 a live dispute between the parties. Am I understanding that
9 right?

10 This is the enhancement for a fraud case involving a
11 misrepresentation of fraudulent -- or fraudulent action during
12 the course of a bankruptcy proceeding. That's what the
13 two-level enhancement is getting at.

14 So is the defense still pressing that objection?

15 **MR. BENNETT:** We do not object to that, Your Honor.

16 **THE COURT:** Okay. So that No. 4 has now been
17 withdrawn.

18 **MR. BENNETT:** Yes.

19 **THE COURT:** Candidly, it seems like an obvious
20 application of that guideline section. So in all events, the
21 defendant has now withdrawn the objection to paragraph 89 and
22 the enhancement under 2B1.1(b)(9)(B).

23 Then the next issue, it deals with the grouping, whether
24 or not the tax fraud and the fraud offenses should be grouped
25 under 3D1.2 or not. So that, as I'm hearing it, remains a sort

1 of live dispute between the parties.

2 **MR. BENNETT:** Your Honor, we withdraw that objection
3 as well.

4 **THE COURT:** Okay. So Objection 5 is now withdrawn.
5 So the parties, I assume, are in agreement that these don't
6 group such that there's an application of the unit analysis
7 under 3D and those rules that apply to that.

8 The next objection is what is the appropriate tax loss for
9 purposes of the tax offense; this is Objection No. 6.

10 Is that a dispute that remains between the parties or not?

11 **MR. BENNETT:** Your Honor, I think we want to keep
12 that because we don't know exactly what's included in it.

13 **THE COURT:** Sure. Fair enough. I'm just trying to
14 identify what I need to resolve here.

15 **MR. BENNETT:** I understand.

16 **THE COURT:** So that's an issue we need to -- and is
17 the government -- the last objection is No. 7. The government
18 thinks the vulnerable victim enhancement under 3A1.1 should
19 apply.

20 Ms. Berkowitz, are you continuing to impress that?

21 **MS. BERKOWITZ:** Yes.

22 **THE COURT:** Okay. So that's, as I see it, the terms
23 of the dispute here.

24 So tell me what I'm going to be hearing today. Give me a
25 little preview, and tell me what you all have in mind.

1 **MS. BERKOWITZ:** Well, Your Honor, if I may, there
2 were additional items that we do address in the sentencing memo
3 that we filed on April 23rd.

4 **THE COURT:** Yeah. Here is my question, as I kind of
5 alluded to: You have had this presentence report since July.
6 I don't see how it is appropriate for -- why aren't they
7 waived? Talk to me.

8 **MS. BERKOWITZ:** Well, some of these, Your Honor, have
9 to do with mandatory restitution, and that's by statute that it
10 is required. So, for example, in the bank fraud, the PSR on
11 Count 9, which is the restitution --

12 **THE COURT:** Yeah, that was a mistake. I agree with
13 you. The 352,000 for Fifth Third, that's what you are
14 referencing, correct?

15 **MS. BERKOWITZ:** As well the restitution to the
16 creditors in the bankruptcy. Upon further research by the
17 government, it is determined that bankruptcy creditors are
18 covered under the Mandatory Victim Restitution Act as well.
19 And so the defendant did plead guilty to one count of hiding
20 assets in bankruptcy, and it is about \$285,000 in assets. That
21 money should be ordered as restitution to those creditors, to
22 the unsecured creditors that are identified in the defendant's
23 bankruptcy petition.

24 **THE COURT:** Who are those people?

25 **MS. BERKOWITZ:** They are 24 individuals. We provided

1 the names to both probation and to counsel. We have a record
2 of them. It is actually within the defendant's bankruptcy
3 pleadings, and we'll be addressing that with Ms. Prokop, who is
4 the bankruptcy trustee.

5 **THE COURT:** What is your position on this?

6 **MR. GURLAND:** We would object. We would ask that it
7 be waived, Your Honor. And while we don't disagree with the
8 number in accounting for loss amount calculation purposes, we
9 don't think it is appropriate.

10 Essentially what Ms. Berkowitz is saying is -- and, again,
11 we were ambushed by this days ago, and I don't understand the
12 numbers in terms of what the unsecured creditors supposedly
13 would or wouldn't get. But what she's asking is that the
14 bankruptcy creditors get a do-over, essentially, and let's just
15 give them all the money they said they asked for, even though
16 the defendant was bankrupt at the time. There wasn't money to
17 give them, but let's pretend that their claims were all real,
18 whatever they were, whether or not they were contingent claims,
19 whether or not they were adjudged at the time or not.

20 In the case of Mr. Lazzaro, the judgment came years later.
21 Mr. Lazzaro, Your Honor, actually sued my client for
22 \$35 million. And at the time of the bankruptcy, there was a,
23 based upon Mr. Lazzaro, \$5 million contingent liability.

24 After the plan was approved, years after, actually three
25 years after, there was finally a judgment; and the Court found

1 his claim was only worth about \$35,000. And because of
2 trebling of damages, attorney fees and interest, you then come
3 up with this later \$1.2 million judgment.

4 And as I understand the e-mails that we recently received,
5 the government is saying Jack Weichman owed him \$1.2 million,
6 effectively, at the beginning of the bankruptcy and he intended
7 to defraud him from \$1.2 million. Jack Weichman believed he
8 owed him nothing, just as he believed he owed Mr. Pabon
9 nothing. And if you look at their chart, Mr. Pabon's
10 contingent claim of \$5 million by the same judge was determined
11 to be worth nothing.

12 So I don't see how we come in after the fact looking at
13 judgments obtained after the fact and pretend these all would
14 have been granted in bankruptcy, let's give them money. To me,
15 it doesn't make any sense, and to me, it is incredibly unfair.

16 We'll deal with it if we have to. We are not really
17 wholly prepared to because, as I said, we haven't been shown
18 these materials until days ago. So I do think it should be
19 waived, and I really don't think it is relevant either.

20 **THE COURT:** Yeah, what are we doing?

21 **MS. BERKOWITZ:** Your Honor, the defendant pled guilty
22 to a count in the bankruptcy fraud.

23 **THE COURT:** Right, one count. It is \$285,000 that he
24 concealed under that count.

25 **MS. BERKOWITZ:** From the bankruptcy estate,

1 Your Honor, and the estate is made up of creditors, and those
2 creditors include the unsecured creditors in this case, which
3 the defendant --

4 **THE COURT:** Is that bankruptcy ongoing?

5 **MS. BERKOWITZ:** It is still in existence. It has not
6 been closed, Your Honor.

7 Those creditors, the unsecured creditors -- this
8 defendant, a Chapter 11 debtor, which we can explain more fully
9 when Ms. Prokop testifies, has certain fiduciary
10 responsibilities to preserving his bankruptcy estate and to
11 those creditors.

12 And we are not asking for restitution in this case of
13 \$1.3 million, although the defendant identified those unsecured
14 creditors as having \$1.3 million in debt, his debt. What we
15 are asking for is the restitution for that count of conviction.
16 It is mandatory restitution, Your Honor, by statute.

17 **THE COURT:** Right. If it is so obvious, if it is so
18 obvious, why did you not bring it to our attention when you got
19 this report nine months ago?

20 **MS. BERKOWITZ:** Your Honor, I apologize, but I have
21 to be honest with you, this is --

22 **THE COURT:** It is very difficult on the morning of
23 sentencing or a week before sentencing to just kind of throw
24 this on the Court's bench.

25 **MS. BERKOWITZ:** Your Honor, I have been a prosecutor

1 for over 20 years, and I have to tell you, this is probably the
2 most complicated individual fraud I have ever seen in my years
3 as a prosecutor.

4 While the fraud itself, the criminal activity, may be
5 simple, stealing from your clients, lying to the bankruptcy
6 court, the way -- the manner in which this defendant executed
7 that scheme, the way in which he covered it up, the level of
8 injury to his victims is Byzantine, and it was very difficult,
9 I have to say, to tease this out.

10 So I apologize to the Court for not getting this material
11 to the Court, you know, sooner than the 10 days before
12 sentencing that I did get it. I do apologize, but, you know,
13 that's on me. That's not on the victims of this case. The
14 defendant pled guilty to that bankruptcy fraud count. It is
15 mandatory restitution.

16 **THE COURT:** How much is that amount for that count?
17 That's like two hundred --

18 **MS. BERKOWITZ:** As we add it up, \$285,000,
19 Your Honor.

20 **THE COURT:** Now, you don't take issue with the
21 amount, correct?

22 **MR. GURLAND:** No, Your Honor. We just take issue
23 with the fact that we need to have a day-long hearing to
24 determine some other loss amount about sums that the Court is
25 not --

1 **THE COURT:** I don't believe that they are --

2 So what are you intending to do? They are in agreement as
3 to the amount, and I'm going to order the restitution. So
4 what's the dispute about?

5 **MS. BERKOWITZ:** Then there's no dispute about the
6 restitution.

7 **THE COURT:** And have you provided to me who the
8 victims are, who these people are, and a prorated basis upon
9 how that money would be distributed, to the extent you ever see
10 it or anybody ever sees it? I mean, this becomes a little bit
11 of an academic exercise.

12 **MS. BERKOWITZ:** I don't know that it is an academic
13 exercise, Your Honor.

14 **THE COURT:** So do you have the individuals' names and
15 what percentage of the 285,000 that I'm likely to order that
16 they would be entitled to?

17 **MS. BERKOWITZ:** Your Honor, I have a list of the
18 names. I think simply ordering a pro rata distribution is
19 sufficient. That would be handled by the financial litigation
20 unit of the U.S. Attorney's Office, as far as the distribution.

21 **THE COURT:** All right. So do you guys have an
22 objection to that?

23 Listen, if you feel like you have been in some way
24 sandbagged here and you are not prepared to really respond to
25 this, very reluctantly, I would continue this, but I don't see

1 the point of it. I mean, they are entitled to restitution.

2 **MR. GURLAND:** No, no. The sandbagging, Your Honor,
3 refers to what I understand we're going to hear hours of
4 testimony from the bankruptcy trustee to try and establish that
5 these contingent claims, like the Dr. Lazzaro, should be
6 treated as a \$1.2 million claim and use that to goose the loss
7 amount and try and increase the guidelines calculation.

8 **THE COURT:** That's a different issue.

9 **MR. GURLAND:** I understand, but that's what we're
10 objecting to though.

11 **THE COURT:** Okay. So what do you all intend to
12 present to me today by way of evidence?

13 **MS. BERKOWITZ:** Your Honor, I intend to present seven
14 witnesses, eight if rebuttal is necessary. Those witnesses
15 will be Jason LeBeau from the FDIC.

16 **THE COURT:** What's his name?

17 **MS. BERKOWITZ:** Jason LeBeau, Special Agent LeBeau.

18 **THE COURT:** What's he going to talk about?

19 **MS. BERKOWITZ:** He's going to talk about the bank
20 fraud. This relates to still a disputed matter.

21 **THE COURT:** Okay.

22 **MS. BERKOWITZ:** Dr. Brenda Eriksen and
23 Dr. Domenico Lazzaro will follow.

24 **THE COURT:** Eriksen is a victim here, correct?

25 **MS. BERKOWITZ:** And so is Dr. Lazzaro.

1 **THE COURT:** How so?

2 **MS. BERKOWITZ:** Dr. Lazzaro is specifically
3 identified by this defendant in his bankruptcy petition as an
4 unsecured creditor. So he is part of that list of unsecured
5 creditors that should be sharing pro rata in the \$285,000 of
6 restitution, Your Honor.

7 **THE COURT:** Fair enough. But you are going to limit
8 his testimony to the bankruptcy, correct?

9 **MS. BERKOWITZ:** Yes, Your Honor, but also --

10 **THE COURT:** Because he's not a victim of this fraud
11 scheme.

12 **MS. BERKOWITZ:** But he is a victim --

13 **THE COURT:** He is not in the Indictment, right?

14 **MS. BERKOWITZ:** He is in the Indictment.

15 **THE COURT:** Where at?

16 **MS. BERKOWITZ:** To the extent, Your Honor, that he is
17 a creditor in the bankruptcy. Remember, it's the --

18 **THE COURT:** No, I understand that component. What
19 I'm saying is, reading his victim impact statement, most of it
20 is about how he claims Mr. Weichman, essentially, ripped him
21 off. And as it relates to that, that's not part of this
22 Indictment, is that right?

23 **MS. BERKOWITZ:** Dr. Lazzaro's -- no, it is not part
24 of the Indictment, no.

25 **THE COURT:** I get how the bankruptcy fraud component

1 is.

2 MS. BERKOWITZ: Right.

3 THE COURT: Okay.

4 MS. BERKOWITZ: But his testimony also, Your Honor,
5 is, since we are still -- we are still disputing vulnerable
6 victim, I think, and also because defense counsel is arguing
7 3553 factors --

8 THE COURT: Sure, I get that. I have received a
9 whole bunch of information from them about what a great person
10 he is. You are free to put on evidence to the contrary. I
11 understand that.

12 So what else?

13 MS. BERKOWITZ: After Dr. Lazzaro, then we would have
14 the testimony of Dr. Ashbach.

15 THE COURT: Okay.

16 MS. BERKOWITZ: Bankruptcy trustee Jennifer Prokop
17 would follow.

18 THE COURT: What is she going to tell me that we
19 already just worked out, that I'm ordering restitution that's
20 going to be based on a pro rata basis of the creditors?

21 MS. BERKOWITZ: Well, Your Honor, I think it is still
22 in dispute as to what the loss amount is. Your Honor, in
23 preparing --

24 THE COURT: That's a legal issue about whether or not
25 it should be -- what is the intended loss here. So I just

1 don't -- I don't want you to waste my time.

2 **MS. BERKOWITZ:** I don't want to waste your time
3 either, but also Jennifer Prokop is going to testify about the
4 duties and the fiduciary responsibilities of a Chapter 11
5 bankruptcy trustee who stands in place of the trustee.

6 **THE COURT:** Listen, I fully understand that stuff. I
7 get bankruptcy appeals all the time. If you think it is going
8 to be helpful to educate me on that, terrific, but -- who is
9 next?

10 **MS. BERKOWITZ:** After Ms. Prokop, we will have the
11 testimony of Jerry Hatagan followed by Brian Visalli, Special
12 Agent Visalli. And, if necessary for rebuttal, we have the
13 testimony of Jamie Dow.

14 **THE COURT:** Who is that?

15 **MS. BERKOWITZ:** Jamie Dow is a former employee at
16 Weichman and Associates.

17 **THE COURT:** Okay. I just want to make it clear, I
18 want testimony on the disputed issues and anything that might
19 bear on 3553 factors, nothing more.

20 What am I going to hear from you guys?

21 **MR. GURLAND:** Your Honor, we don't have any
22 witnesses. And I understand it is the government's prerogative
23 maybe to call some of these witnesses, but calling
24 Brenda Eriksen and Mr. Lazzaro purportedly to determine whether
25 or not Dr. Ashbach was a vulnerable victim to me makes

1 absolutely no sense.

2 **THE COURT:** Well, certainly Dr. Eriksen is a victim
3 here. She has a right to make a victim impact statement.

4 **MR. GURLAND:** No, I understand they have a right to
5 make a statement as a witness, but I'm saying the government --
6 we contest the vulnerable victim enhancement. I believe that
7 probation got that right, that the enhancement shouldn't apply.
8 I believe there is already enough before the Court to determine
9 whether or not it applies, and I don't understand how Brenda
10 Eriksen or Mr. Lazzaro could have any relevant testimony as to
11 whether or not Dr. Ashbach was a vulnerable victim.

12 **THE COURT:** I don't know either, but I guess we will
13 see.

14 **MR. GURLAND:** And --

15 **THE COURT:** Let me ask one other thing. Well, go
16 ahead. I'm sorry.

17 **MR. GURLAND:** I was also going to say, with regard to
18 Mr. LeBeau, Mr. Hatagan, Mr. Visalli, I assume they are being
19 put on, essentially, to put in all of their summaries and
20 exhibits. We have no objection to those coming before the
21 Court. We can stipulate to most of them. I think Your Honor
22 saw most of them in Mr. Schaefer's sentencing. So, again, I
23 don't know that all the testimony is necessary for purposes of
24 the government being able to argue the points contained in the
25 charts.

1 **THE COURT:** Well, before each one of them come up
2 here, I'm going to ask for a summary of what they are going to
3 testify about, and we'll see if we need to actually call them
4 or if we can do it by way of proffer from the government.

5 Let me ask one thing, Ms. Berkowitz, that has me totally
6 confused. In your sentencing memorandum -- in the Indictment,
7 we talked about this before, Dr. Ashbach is Dr. B, correct?

8 **MS. BERKOWITZ:** Correct, Your Honor.

9 **THE COURT:** Am I correct that in your sentencing
10 memorandum Dr. Ashbach is now Dr. A?

11 **MS. BERKOWITZ:** Yes, Your Honor. I just used the
12 first initial of his last name. That's correct.

13 **THE COURT:** I just wanted to let you know --

14 **MS. BERKOWITZ:** I'm sorry to confuse you, Your Honor.

15 **THE COURT:** -- that was highly confusing.

16 **MS. BERKOWITZ:** I apologize. I apologize.

17 **THE COURT:** The A and the B are going.

18 **MS. BERKOWITZ:** Understood.

19 **THE COURT:** Okay. So I'll turn it over to you,
20 Ms. Berkowitz.

21 **MS. BERKOWITZ:** Your Honor, just one more issue. We
22 are saying that the tax loss with respect to Dr. Ashbach should
23 be factored into the guideline calculation. So I don't know --
24 that is something that we believe --

25 **THE COURT:** That's what we talked about. That's one

1 of the disputed issues.

2 **MS. BERKOWITZ:** Okay.

3 **THE COURT:** You know, you have to establish the tax
4 loss, and then the issue is whether or not it is grouped or not
5 grouped under Chapter 3 of the guidelines.

6 **MS. BERKOWITZ:** Well, I understood from counsel that
7 they do agree to the tax loss but not for restitution purposes.
8 So are they agreeing to the tax loss for purposes of adding it
9 into the guideline calculation on the wire fraud?

10 **THE COURT:** Oh, you are talking about the tax -- not
11 the tax loss from the failure to --

12 **MS. BERKOWITZ:** Not the tax loss, right. The taxes
13 that Ashbach paid based on the fraudulent transfers from the
14 defendant.

15 **THE COURT:** I don't -- actually, now I don't recall
16 whether they are stipulating to that or not.

17 **MR. BENNETT:** Yes, Your Honor.

18 **THE COURT:** There you go.

19 **MS. BERKOWITZ:** Thank you, Your Honor.

20 **THE COURT:** Okay. You may proceed.

21 **MS. BERKOWITZ:** The government calls Jason LeBeau to
22 the stand.

23 (The oath was administered.)

24 **THE WITNESS:** Yes, I do.

25 \\\

JASON LEBEAU, GOVERNMENT WITNESS, SWORN

DIRECT EXAMINATION

BY MS. BERKOWITZ:

Q. Agent LeBeau, would you please state your full name for the record?

A. Jason LeBeau, L-E-B-E-A-U.

Q. How are you employed, Agent LeBeau?

A. I'm currently a special agent with the FDIC's Office of Inspector General.

Q. And as an employee with the Inspector General for the FDIC, are you involved in investigations regarding bank fraud crimes?

A. Yes, I am.

Q. Were you involved in an investigation regarding Jack Weichman?

A. Yes.

Q. And did that investigation concern bank account and credit lines that were opened at Centier Bank in the name of David Ashbach by Jack Weichman?

A. Yes.

Q. In the course of your investigation, did you review bank records related to the bank account and those lines of credit?

A. Yes, I did.

Q. Did the material you received include bank statements, checks, internal loan committee records, internal bank

1 communications, records obtained during a search of
2 Defendant Weichman's business operations?

3 A. Yes, they did.

4 Q. And did you prepare a chart summarizing the information
5 contained in those records?

6 A. Yes, I did.

7 Q. I'm going to show you what's been marked as LeBeau 1
8 through 3, taking a look first at LeBeau No. 1. Is that one of
9 the charts that you prepared?

10 A. Yes, it is.

11 Q. What does this document summarize?

12 A. This is basically just a summary of the bank fraud charges
13 in Counts Five, Six and Seven of the Superseding Indictment.

14 Q. Okay. Taking a look at LeBeau No. 2, can you tell the
15 Court what LeBeau No. 2 summarizes?

16 A. This is just a simple summary of the bank fraud, Counts
17 One, Two, Three and Four of the Superseding Indictment.

18 Q. And what about LeBeau No. 3?

19 A. Again, just a simple chart showing the timing of when
20 Dr. Ashbach became aware of the fraudulent use of this Centier
21 account.

22 Q. Agent LeBeau, let me direct your attention to June of
23 2006. And, specifically, let's take a look at Centier
24 Exhibit 11D. Was that one of the -- was that something that
25 you included in your summaries, or the contents, the

1 information contained within Centier 11D?

2 A. Yes, this is a page of that document.

3 Q. Can you tell the Court, what is Centier 11D?

4 A. This is basically an interoffice memorandum to the loan
5 committee for Centier Bank from the loan officer Tom Neuffer,
6 which is N-E-U-F-F-E-R, and it is dated June 6, 2002.

7 Q. And this is for a loan to David Ashbach?

8 A. This is essentially the loan officer communicating with
9 the loan committee at the time when, purportedly, David Ashbach
10 is attempting to obtain a \$250,000 line of credit from Centier
11 Bank.

12 Q. Taking a look --

13 MS. BERKOWITZ: If we can take a look at the full
14 page of Centier 11D. This is Bates number, I believe, 614165.

15 Q. What's the purpose -- who's getting this line of credit?
16 Who is in contact with the bank for this line of credit
17 supposedly for David Ashbach?

18 A. So Jack Weichman's in contact with primarily Tom Neuffer
19 from the bank. And what is happening here is they are
20 attempting to obtain a loan purportedly for David Ashbach to
21 obtain working capital for his investment in Broadmoor Country
22 Club.

23 Q. Agent LeBeau, in the course of your investigation into
24 this bank fraud regarding a line of credit and a bank account
25 opened in the name of David Ashbach by Jack Weichman, were you

1 able to determine if David Ashbach ever had an interest -- ever
2 had an investment in Broadmoor Country Club?

3 **A.** I was able to determine that he did not.

4 **Q.** Was Jack Weichman dealing with a particular person at
5 Centier Bank?

6 **A.** Yes.

7 **Q.** And who was that person?

8 **A.** Tom Neuffer.

9 **Q.** And did Tom Neuffer make statements under oath on
10 November 19th of 2014 regarding this bank account that was
11 opened in the name of David Ashbach, as well as the lines of
12 credit for David Ashbach that were taken out by defendant
13 Jack Weichman?

14 **A.** Yes, he did.

15 **Q.** And is that -- will that statement be found in LeBeau
16 No. 4?

17 **A.** I believe so, yes.

18 **MS. BERKOWITZ:** Your Honor, at this time, the
19 government would move to admit grand jury material.

20 **THE COURT:** What's the exhibit number?

21 **MS. BERKOWITZ:** This is LeBeau No. 4, Your Honor.

22 **THE COURT:** Okay. Any objection?

23 **MR. GURLAND:** No, Your Honor.

24 **THE COURT:** It is admitted.

25 \\\

1 BY MS. BERKOWITZ:

2 Q. Have you reviewed LeBeau No. 4?

3 A. Yes, I have.

4 Q. And in LeBeau No. 4, does Mr. Neuffer talk about the book
5 of business that was brought to Centier Bank by defendant
6 Jack Weichman?

7 A. Yes, he does.

8 Q. How much was that book of business?

9 A. So, essentially, Jack Weichman had multiple clients that
10 he brought to Centier Bank. And those clients, the totality of
11 what -- the amount of the loans that were brought to that bank
12 was approximately 20 million, according to Neuffer.

13 Q. As a result of that \$20 million book of business, did the
14 bank accommodate the defendant? Was he given a little latitude
15 in the handling of his clients and requests for clients?

16 A. Yes, he was, a lot of latitude.

17 Q. Centier Bank is a family-owned bank, is that correct?

18 A. To my knowledge, yes.

19 Q. It is a local bank?

20 A. It's a local -- it's about a \$3.7 billion bank.

21 Q. And in Mr. Neuffer's testimony under oath, did he talk
22 about how the bank would typically handle someone like an
23 accountant or a lawyer coming in and asking to conduct business
24 on behalf of a client?

25 A. Yes.

1 Q. And did he say it was fairly typical then for a lawyer or
2 an accountant to come in and say: I'm acting on behalf of a
3 client, could you do X, Y, and Z for my client?

4 A. Yes.

5 Q. Was the understanding, Agent LeBeau, that the lawyer or
6 accountant who was making such a request to the bank, that they
7 were acting on behalf of the client?

8 A. Yes.

9 Q. And did Tom Neuffer believe that any request that was made
10 by defendant Jack Weichman was being made on behalf of his
11 client?

12 A. His client, David Ashbach, yes, in this case.

13 Q. Did Tom Neuffer ever speak to or meet David Ashbach
14 regarding the lines of credit that were taken out in his name
15 at Centier Bank?

16 A. No.

17 Q. Was Tom Neuffer instructed by anyone not to bother any of
18 the clients, including David Ashbach, with any issues relating
19 to lines of credit or bank accounts?

20 A. According to Neuffer, yes, by two people.

21 MS. BERKOWITZ: If we can go back to Centier 11D and
22 to Bates 192 through 193.

23 Q. Let's take a look -- there was a credit line, was there
24 not, in 2006 that was sought by Jack Weichman ostensibly on
25 behalf of David Ashbach, is that correct?

1 A. That's correct.

2 MS. BERKOWITZ: If we can go to Bates 192.

3 Q. Now, this is part of the record that Centier Bank kept and
4 maintained regarding these lines of credit?

5 A. Yeah, this particular document is a credit analysis report
6 that's being conducted by the bank at the time the loan is
7 being sought.

8 Q. And it identifies the loan request that's being made,
9 right?

10 A. Yes, it does.

11 Q. And does it say what it is supposed to be used for?

12 A. Yes.

13 Q. And is that found under collateral and value or -- I'm
14 sorry, does it --

15 A. Under the "Purpose," it indicates that this \$500,000 line
16 of credit was to be used for the personal investments, various
17 stocks, ultimately, of David Ashbach.

18 Q. In the course of your investigation of this bank fraud,
19 Agent LeBeau, did you find any evidence of stock being
20 purchased for David Ashbach in 2006?

21 A. No.

22 Q. Was David Ashbach -- in the course of your investigation,
23 were you able to determine was David Ashbach aware of this loan
24 in 2006?

25 A. No, he was not.

1 Q. And what's the line of credit here?

2 A. This is a \$500,000 line of credit.

3 Q. Let's take a look at Bates No. 211 on this same exhibit,
4 11D, Centier 11D.

5 Did there come a point in time in 2007 where that \$500,000
6 line of credit now balloons to \$850,000?

7 A. Yeah. So approximately a year after, the \$500,000 line of
8 credit increases from 500- to 800,000.

9 MR. GURLAND: I'm sorry, what government exhibit
10 number is this?

11 MS. BERKOWITZ: It's Centier 11D, Bates page 211,
12 last three digits.

13 BY MS. BERKOWITZ:

14 Q. What is the stated purpose of increasing this line of
15 credit held in the name of David Ashbach?

16 A. Sure. It is for personal investments. And it is wordy,
17 but essentially to move Woodhalapenos from its present location
18 to another location, or Jalapenos, the restaurant.

19 Q. It says, "Dr. Ashbach is assisting Jack Weichman in this
20 endeavor," is that right?

21 A. That's what it says, yes.

22 Q. And this is on August 1st of 2007 -- or July -- the date
23 is July 26, 2007, it looks like?

24 A. Yes.

25 Q. In the course of your investigation, were you able to

1 determine, in July of 2007, at the time that this line of
2 credit is taken out, was David Ashbach aware of that?

3 A. No, he was not.

4 Q. Now, we're talking about the line of credit, but was there
5 also a bank account that Centier Bank, thinking that they had
6 this valid line of credit for Dr. Ashbach, required Dr. Ashbach
7 to have some sort of a bank account, a checking account?

8 A. Yes, and I refer to it as a 392 account.

9 Q. 390 or 3 -- 390.

10 A. 390, you are right. Thank you.

11 Q. And that account was just a regular checking account?

12 A. Yes, it was.

13 Q. In the course of your investigation, did you look into
14 money that was moving in and out of that bank account?

15 A. Yes, in great detail.

16 Q. And in the course of your investigation, did you see money
17 being moved or diverted from Dr. Brenda Eriksen's Centier Bank
18 into Dr. Ashbach's 390 bank account?

19 A. Yes, I did.

20 Q. In the course of your investigation, were you able to
21 determine where that money was spent that was moved from
22 Dr. Ericksen's business account into David Ashbach's 390
23 account, what happened to that money?

24 A. The vast majority of it went to the casino.

25 Q. Showing now what's been marked as Visalli No. 8, is this a

1 summary of where the money went?

2 **MR. GURLAND:** Your Honor, if I just may, I understand
3 there was supposed to be a proffer at the beginning as to what
4 the witnesses were going to be testifying about that was
5 contested. We are not contesting Brenda Eriksen, we are not
6 contesting the money that was spent at the casino, so I'm not
7 sure what we're doing.

8 **THE COURT:** Yeah, I understand all of this, and none
9 of it is contested. In fact, in his plea agreement, he
10 admitted to all of this. It is in the presentence report, and
11 it is not objected to.

12 **MS. BERKOWITZ:** I will move on, Your Honor.

13 **THE COURT:** Yeah, I am fully aware of what he did.

14 **MS. BERKOWITZ:** I'll move on.

15 **BY MS. BERKOWITZ:**

16 **Q.** Agent LeBeau, did something happen in 2013 with respect to
17 Dr. Ashbach and his bank account and the line of credit?

18 **A.** Yes, a couple of things happened in 2013.

19 **Q.** Can you tell us what happened?

20 **A.** As the summary shows, the first thing --

21 **Q.** Taking a look at agent -- LeBeau 3?

22 **A.** Yes, I'm sorry, LeBeau 3.

23 On September 5, 2013, there were 35 separate -- they are
24 actually not checks, they're items -- bank items totaling
25 \$360,000 were drawn on Ashbach's 390 account. They were made

1 payable to Horseshoe Casino, and they basically bounced.

2 Q. Let's take a look at --

3 MR. GURLAND: Your Honor, same objection. We're not
4 objecting to the monies that were taken and spent at the
5 casinos. Mr. Weichman has admitted to it. There's no reason
6 to have a hearing over it. I guess I would ask for some
7 proffer as to what additional disputed issue, other than the
8 line of credit, which he's already testified to, this testimony
9 relates to.

10 MS. BERKOWITZ: Your Honor, this goes to the
11 vulnerability of the victim. This explains what happens with
12 the account when he finally becomes aware of what's really
13 going on with the account.

14 THE COURT: Proceed.

15 BY MS. BERKOWITZ:

16 Q. Taking a look at LeBeau No. 3, you reference the first
17 entry here for 35 separate checks for \$360,000 -- a total of
18 \$360,000 that are drawn on a casino, is that correct,
19 Agent LeBeau?

20 A. They were payable to the casino, yes, and they ultimately
21 bounced at the casino.

22 Q. And in the course of your investigation, were you able to
23 determine if this was, in fact, the first time that Dr. Ashbach
24 was aware that Jack Weichman was using his account to funnel
25 money into casinos?

1 A. Yes, this is the first time, to my knowledge.

2 MR. GURLAND: Objection, Your Honor. Just for the
3 record, that's false, but objection.

4 THE COURT: Proceed.

5 BY MS. BERKOWITZ:

6 Q. Agent LeBeau, what happened -- was the account -- the
7 account was in existence in September of 2013, is that right,
8 David Ashbach's? Prior to these checks coming through, the
9 account was in existence, is that right?

10 A. That's correct.

11 Q. When those checks came through, what action, if any, did
12 David Ashbach take as a result of seeing these checks go into a
13 casino?

14 A. What happens is the bank actually reaches out to
15 Dr. Ashbach and notifies him that these checks had bounced, and
16 they were signed to the casino. And Dr. Ashbach, according to
17 the bank, seemed surprised, didn't know that the account
18 existed, also didn't know that loans had existed. So he was
19 very surprised, according to the handwritten notes of
20 Mary Panas.

21 Q. What does he do when he finds out there are these checks
22 coming through? Does he keep the account open?

23 A. No, he closes it.

24 Q. Does he take Jack Weichman off the account?

25 A. He closes it, so the account is -- yeah.

1 Q. You mentioned some handwritten notes. And are these notes
2 from somebody by the name of Mary Panas?

3 A. Yes.

4 Q. And these were records that were produced to you in the
5 course of your investigation by Centier Bank?

6 A. Yes.

7 Q. I'm showing you what's Panas notes, Bates Nos. 701420
8 through 421, produced to defendants in Rule 16 discovery as
9 well as in sentencing.

10 Taking a look at these notes, Agent LeBeau, these were
11 made at the time the event occurred, is that correct?

12 A. To my knowledge, yes.

13 Q. By Mary Panas?

14 A. To my knowledge, yes.

15 MS. BERKOWITZ: Can we scroll down a little bit on
16 those notes. At the paragraph beginning, "Jack is like
17 family."

18 THE COURT: I think you passed it.

19 MS. BERKOWITZ: Right here.

20 BY MS. BERKOWITZ:

21 Q. It says here that it was easier to turn the other cheek
22 when Jack was helping them make money, but as he's getting
23 older, now 70 years old, he can't continue to do so.

24 Are these the statements that Mary Panas is recording from
25 David Ashbach?

1 A. Yes.

2 Q. Agent LeBeau, have you interviewed David Ashbach?

3 A. Yes, I have, many times.

4 Q. Did you ask him did he know of these lines of credit that
5 were taken out in his name by Jack Weichman at the time these
6 lines of credit are being taken out?

7 A. He did not know at that time.

8 Q. So did he -- he didn't have the ability to approve or
9 disapprove these lines of credit, did he?

10 A. That's correct.

11 MS. BERKOWITZ: If I may have one moment, Your Honor.

12 THE COURT: (No audible response).

13 MS. BERKOWITZ: I have no further questions for the
14 witness.

15 THE COURT: Mr. Gurland, do you have any questions of
16 this man?

17 MR. GURLAND: Briefly, Your Honor.

18 THE COURT: Sure.

19 CROSS-EXAMINATION

20 BY MR. GURLAND:

21 Q. Good morning, Mr. LeBeau.

22 A. Good morning.

23 Q. You interviewed David Ashbach a number of times in the
24 course of this investigation, correct?

25 A. Yes.

1 Q. And one of the first times you interviewed him, roughly,
2 was on May 2nd, 2014?

3 A. I'll take your word. Probably.

4 Q. I'm actually looking at a memorandum of interview that was
5 prepared as of that date regarding Mr. Ashbach. Do you recall
6 Mr. Ashbach telling you that he knows Jack Weichman has a,
7 quote, serious gambling problem, closed quote?

8 A. Yes.

9 Q. And do you recall also that in that interview he told you
10 that he had evidence that Weichman had written checks out of
11 his account to Ameristar Casino?

12 A. In 2014, yes.

13 Q. That he told you that in 2014?

14 A. Yes, at that time.

15 MR. GURLAND: If I could turn on the ELMO.

16 THE COURT: Noel, could you switch to the ELMO,
17 please.

18 MR. GURLAND: Thank you, Noel.

19 BY MR. GURLAND:

20 Q. I'm showing you what's been marked as Defendant's
21 Exhibit 14. It is a memo to Tom Neuffer from Darrell Jagers.
22 If you could please read the memo into the record, just the one
23 paragraph.

24 A. 2/23/2010, per -- the written part, you mean, sir, you
25 want me to read?

1 Q. Yes, the paragraph.

2 A. "This is a check image. Item came through last night.
3 This is the account Jack Weichman is an authorized signer on.
4 Check looks as though he is an owner of it, and it was crossed
5 out and made payable to Ameristar. I'm bringing to your
6 attention based on our prior discussions." Then 2/23/10, "Per
7 conversation with Dr. Ashbach, okay to" -- something --
8 "check."

9 Q. Honor?

10 A. -- "honor check. TN," which I presume is Tom Neuffer.

11 Q. And so Ameristar is the casino Dr. Ashbach told you that
12 he knew he had evidence of Jack gambling at?

13 A. Well, the bank did not notify Dr. Ashbach at this time how
14 the checks were negotiated. They just contacted him and
15 indicated that checks had been negotiated, but they were very
16 clear not to tell him, for some reason.

17 Q. Well, were you involved in that conversation?

18 A. I believe I saw notes or documentation.

19 Q. Were you involved in the conversation that the bank had
20 with Dr. Ashbach?

21 A. No.

22 Q. Do you know, in fact, whether or not they told him that
23 the check was for gambling?

24 A. Just based on the notes and documentation I saw.

25 Q. He was told it was a \$167,000 check, and he said, go ahead

1 and honor it, didn't he?

2 A. I just want to be clear that the documentation I saw was
3 that the bank was very specific to ensure that it was not told
4 to Dr. Ashbach that they were negotiated at casinos.

5 Q. That's the \$167,000 Ameristar check that Dr. Ashbach told
6 the bank to go ahead and honor in 2010?

7 A. I just, again, just want to be clear that Dr. Ashbach does
8 not know it is being negotiated at Ameristar in 2010.

9 Q. Is that the check that Dr. Ashbach told the bank to go
10 ahead and honor in 2010? Please answer my question.

11 A. Yes. Yes.

12 Q. In the course of your investigation, did you do any
13 analysis of the sums of money that Jack Weichman spent at
14 casinos in the area?

15 A. Yes.

16 Q. Did that include analysis with regards to monies he spent
17 at casinos apart from Dr. Ashbach's money?

18 A. Well, yes, it would include a variety of sources, yes,
19 including Dr. Ericksen, including the loan proceeds.

20 Q. Did you do any -- were you involved in any analysis with
21 Agent Visalli regarding gambling at Players Club Casino?

22 A. The analysis that I was involved in was an overall
23 analysis that about \$9 million went through casinos.

24 Q. How much came out?

25 A. About six and a half maybe.

1 Q. So about \$3 million lost to casinos?

2 A. Approximately.

3 Q. And if \$9 million was going to casinos, it is fair to say
4 that amount of money involved much more than the monies misused
5 from Dr. Ashbach and Dr. Ericksen?

6 A. I don't know about much more but maybe more. There was a
7 lot of Dr. Ashbach and Dr. Ericksen money.

8 Q. You indicated that there was a loan taken out in 2002 that
9 Dr. Ashbach purportedly didn't know about, correct?

10 A. That is correct.

11 Q. I'm going to direct your attention to Defendant's
12 Exhibit 1.

13 Do you recognize that document from your investigation?

14 A. It looks familiar. I have seen a lot, but yes.

15 Q. It is a June 24, 2002, letter of direction signed by
16 Dr. Ashbach, correct?

17 A. Yes.

18 Q. Okay. And that, to your knowledge, is Dr. Ashbach's
19 signature?

20 A. To my knowledge, yes.

21 Q. Does this document relate to the loan obtained in 2002?

22 A. Yes.

23 Q. Okay.

24 A. So I was going to explain further if you want.

25 Q. Dr. Ashbach signed a letter of direction in 2002 relating

1 to the loan, correct?

2 A. That purports to be his signature, yes.

3 Q. Have you reviewed the personal financial statements signed
4 by Dr. Ashbach year after year after that loan was obtained?

5 A. I have seen some of them, yes.

6 Q. You are aware that the loan is indicated on his personal
7 financial statements?

8 A. The 2002 loan?

9 Q. Yes.

10 A. I don't know if it is, but possibly. I don't think he
11 prepares those financial statements.

12 Q. I'm going to show you what's been marked as Defendant's
13 Exhibit 2. I'm going to represent to you that this is
14 Dr. Ashbach's August 2003 financial statement.

15 Are you familiar with this document? Did you review it in
16 the course of your investigation?

17 A. Yes.

18 Q. Who signed it?

19 A. It appears to be David Ashbach's signature.

20 Q. And if you look at the first page, under liabilities,
21 there's a section that says "Note payable to other
22 institutions." It's a \$245,000 amount?

23 A. Yes.

24 Q. Does that relate to the loan?

25 A. I'd have to look at the underlying -- I would have to look

1 at the second page. Most likely. I have no idea what that
2 liability is.

3 Q. Are you aware of any other loan --

4 A. At this --

5 Q. -- that he had at that time?

6 A. That's a hard question. I mean, I think the second page
7 might show potentially what that loan is. Usually --

8 So there should be a liability section, and it would tell
9 you what that is. So I can't answer what that 245 is.

10 Q. Is this the Centier Bank loan (indicating)?

11 A. 31725, yes.

12 Q. So that loan was indicated on the personal financial
13 statement that Dr. Ashbach signed off on after the loan was
14 obtained?

15 A. Yes, that purports to have Dr. Ashbach's signature, yes.

16 Q. With respect to the line of credit that was turned into an
17 \$850,000 loan for Woodhalapenos, you would agree that
18 Mr. Weichman disclosed to the bank that the purpose of that
19 loan was to assist in Woodhalapenos, correct?

20 A. Right. So to be clear, the 250, this is a completely
21 separate --

22 Q. Yes.

23 A. Okay. All right. So can you --

24 Q. I'm referring to the transaction in 2007 that you
25 testified to.

1 A. Yeah, '6 and '7. So it goes from 500 to 850 in '7, yes.

2 Q. And you would agree that Mr. Weichman represented to the
3 bank the truth, that that money was being used for Jalapenos
4 for his personal use?

5 A. For Dr. Ashbach's personal use?

6 Q. For Jack Weichman's personal use. I'm referring to the --

7 A. I understand. I don't think he refers to it as being for
8 Jack Weichman's personal use. I believe what the purpose is is
9 for David Ashbach's working -- or working capital for
10 Woodhalapenos being moved. So, in other words, David Ashbach's
11 investment in Woodhalapenos is what is being told to the bank.
12 And I believe that's also what Mr. Neuffer testified to as
13 well, that their understanding at the bank was.

14 Q. Showing you what I have marked as Defendant's Exhibit 5,
15 and I believe this was Centier Exhibit 11 that you testified
16 about earlier.

17 A. Okay.

18 Q. This is the memo to Tom Neuffer that you referred to?

19 A. Yes.

20 Q. In the last sentence, under "Purpose," the memo indicates
21 Dr. Ashbach is assisting Jack Weichman in this endeavor, does
22 it not?

23 A. I absolutely understand that, but it is being purported as
24 his personal investment, as David Ashbach's personal
25 investment, and he is assisting Jack Weichman. I understand.

1 Yeah.

2 Q. Are you aware that every year after this loan was obtained
3 Dr. Ashbach ratified the loan and signed up on the loan
4 renewals?

5 A. There are documents with Dr. Ashbach's purported signature
6 on them, yes.

7 Q. Every year. The loan was renewed every year. He signs
8 off on it every year, correct?

9 A. Yes.

10 MR. GURLAND: Nothing further, Your Honor.

11 THE COURT: Any redirect?

12 MS. BERKOWITZ: Yes, Your Honor.

13 REDIRECT EXAMINATION

14 BY MS. BERKOWITZ:

15 Q. Agent LeBeau, can we take a look at LeBeau No. 5. Counsel
16 was asking you about the \$167,000 note to a casino -- check to
17 a casino. And in the course of your investigation, did you
18 take a little bit further look at this note, the \$167,000 check
19 to a casino?

20 A. Yes.

21 Q. And did you discuss this with the bank and did you receive
22 information from the bank regarding what they disclosed to
23 David Ashbach on that check?

24 A. Yes.

25 Q. And would that be found in LeBeau No. 5?

1 A. I believe so.

2 MS. BERKOWITZ: Okay. If we can scroll down on
3 LeBeau No. 5.

4 Q. It says here, does it not, "I did not indicate" -- this is
5 from Tom Neuffer, and the subject is David Ashbach, it is not
6 to David Ashbach. "I did not indicate where the checks were
7 negotiated." So they were negotiated at a casino, right?

8 A. Yes.

9 Q. Not told to David Ashbach at that time?

10 A. Tom Neuffer was specifically told not to tell Dr. Ashbach,
11 according to documentation I have seen.

12 Q. Did David Ashbach think this was some sort of payment
13 related to some expense of his?

14 MR. GURLAND: Objection as to what David Ashbach
15 thought. I believe the government is going to call him.

16 BY MS. BERKOWITZ:

17 Q. What did David Ashbach tell you he understood that to be?

18 A. David Ashbach very much trusted Jack and assumed it was
19 for something legitimate.

20 MS. BERKOWITZ: Let's take a look at Defense Exhibit
21 No. 1. If we can move back out of the -- to the ELMO.

22 Q. This is Defense No. 1, and this is a letter that is --
23 looks like it might be David Ashbach's signature regarding the
24 2002 line of credit.

25 Agent LeBeau, did you ask David Ashbach did he read the

1 material that was put in front of him that he got from
2 Jack Weichman?

3 A. To my knowledge, he did not.

4 Q. In fact, did he say as much?

5 A. Yes. Yes.

6 Q. Did he testify in grand jury under oath that he didn't
7 really look at these documents?

8 A. Yes.

9 Q. In fact, weren't there other employees of Weichman and
10 Associates and MMDS that said David Ashbach did not read the
11 material that was put in front of him, he would just sign
12 things?

13 A. Yes, based on his trust with --

14 Q. In fact, didn't Linda Einterz, an employee of Weichman and
15 Associates, specifically call David Ashbach naive when it came
16 to money and his finances?

17 A. Yes.

18 Q. Why was that, Agent LeBeau? Why was David Ashbach not
19 taking a look at these records or the things he was being asked
20 to sign by Jack Weichman?

21 A. David Ashbach basically considered Jack Weichman like a
22 brother and trusted him with everything.

23 MS. BERKOWITZ: Let's take a look at Search Warrant
24 117.

25 Q. That's also something that's part of your summaries, isn't

1 it?

2 A. Yes, it is.

3 MS. BERKOWITZ: Let's specifically look at Search
4 Warrant 117.

5 Can we move back to the computer, please.

6 Q. In the course of your investigation, did you do a search
7 of Jack Weichman's offices?

8 A. Yes, I did.

9 Q. Did you also do a search of Linda Einterz's office?

10 A. Yes.

11 Q. She has an office at Jack Weichman's?

12 A. Weichman and Associates, yes.

13 Q. She's an accountant?

14 A. Yes.

15 Q. And included in the material that you seized, was it this
16 memorandum dated August 3rd of 2010?

17 A. This was something we found, yes.

18 Q. This is a recording, a conversation that Linda Einterz, an
19 employee of Jack Weichman, is having with David Ashbach, is
20 that right?

21 A. Yes, it is.

22 Q. And he's asking her about DaVita money tied up at Centier
23 brokerage. Could you explain that to the Court? What's going
24 on here? Why is this even relevant to the line of credit that
25 we have been talking about?

1 **A.** What happened is the line of credit -- the loan required
2 collateral, of course, and the collateral was Dr. Ashbach's
3 DaVita money, stock that he had in DaVita, which was an entity
4 that they sold, and that was the collateral.

5 According to this document, Dr. Ashbach was just wondering
6 why is this DaVita money tied up in a Centier brokerage account
7 so he can't access it. And the reason is is because it was
8 being used as collateral, so the bank would have to approve.

9 **Q.** And he says he needs to talk to you about it. Also, at
10 the very end here, does he -- he says he suspects the reason
11 his money is tied up is that he has helped you in some way he
12 does not yet know?

13 **A.** Yes.

14 **MS. BERKOWITZ:** Let's take a look at Search Warrant
15 14.

16 **Q.** So is it fair to say that it would appear, based on Search
17 Warrant 17, that on August 3rd of 2010 David Ashbach had no
18 idea that his DaVita stock was tied up on some sort of line of
19 credit?

20 **A.** Yes. And this next document is even probably more
21 telling.

22 **Q.** This is two months later, right?

23 **A.** Yes.

24 **Q.** Also, again, Linda Einterz -- is that Linda Einterz, the
25 accountant that works in Jack Weichman's office?

1 A. Yes.

2 Q. And he's saying he talked to Centier and they told him he
3 has three personal loans with Centier?

4 A. Dr. Ashbach is saying -- here he's saying that he talked
5 to Centier and he has three personal loans and he was wanting
6 to know why he had these loans because he didn't remember
7 having all these loans.

8 Q. So he doesn't know about all these loans? Does he know
9 about any of those loans?

10 A. Apparently not.

11 MR. GURLAND: Your Honor, if I --

12 BY MS. BERKOWITZ:

13 Q. Take a look at the second paragraph. What does he say in
14 that second --

15 THE COURT: Wait a minute.

16 Counsel.

17 MR. GURLAND: I'm just wondering if there's some way
18 we can move this along. I mean, if she's putting on a witness
19 to read from documents about what Dr. Ashbach knew -- I
20 understand at sentencing she has more latitude from an
21 evidentiary standpoint, so she doesn't need to follow any
22 evidence rules. But we have no objection to her reading from
23 these documents and her argument for whatever she wants to seek
24 at sentencing. I don't know that we need to go through this
25 whole process. It doesn't seem to relate to any of the

1 disputes we have.

2 **THE COURT:** Yeah. I'm not going to tell her what to
3 do. It is her case. But I will say that it does seem to me
4 that these are maybe better questions of Dr. Ashbach. He's the
5 person who has firsthand knowledge about what he knew and what
6 he was thinking.

7 But proceed.

8 **MS. BERKOWITZ:** Thank you, Your Honor.

9 **BY MS. BERKOWITZ:**

10 **Q.** Finally, was there another memorandum that you found in
11 the course of your search? And this is Search Warrant 23.
12 This is dated December 18, 2012.

13 **A.** This was another document we found, yes.

14 **Q.** And this is, again, from Linda Einterz?

15 **A.** Yes, to Jack. "Dr. Ashbach stopped in today to meet with
16 Bill," which would be Bill Bercaw, I presume. "I met with him
17 first to have him sign the attached Centier advice of trades.
18 He wanted to know why you sold so much stock from his account.
19 I told him to ask Bill when he meets with him next because Bill
20 is the one who actually makes the calls to sell the stock. He
21 said Bill never knows the answer, based on his prior questions
22 to Bill. He wants -- Dr. Ashbach wants you to tell him why the
23 642,000 you sold for him, what it is for."

24 **Q.** Based on your review of the material obtained and the
25 search warrant, based on your review of the Centier Bank

1 records, based on your review -- your conversations with David
2 Ashbach, was David Ashbach an intelligent, aware investor?

3 **A.** Dr. Ashbach is not very financially savvy.

4 **Q.** Was he trusting that his accountant and friend
5 Jack Weichman was going to protect his interests?

6 **A.** Very much so.

7 **MS. BERKOWITZ:** I have no further questions.

8 **THE COURT:** Do you have anything else?

9 **MR. GURLAND:** No, Your Honor.

10 **THE COURT:** Sir, thank you. You may step down.

11 **THE WITNESS:** Thank you.

12 **THE COURT:** Call your next witness.

13 **MS. BERKOWITZ:** Government calls Dr. Brenda Eriksen.

14 **MR. GURLAND:** Judge, just for the record, none of
15 this is in dispute.

16 **THE COURT:** Yeah, I'm taking this as victim impact
17 testimony, that Dr. Erickson absolutely has a right to address
18 the Court as an alleged victim of the offense.

19 Ma'am, if you would, please come forward. When you get up
20 here, I need you to raise your right hand to be sworn in. This
21 lady is going to swear you in right here.

22 (The oath was administered.)

23 **THE WITNESS:** I swear.

24 **THE COURT:** Okay. Ms. Berkowitz, you may proceed.

25 \\\

BRENDA ERIKSEN, GOVERNMENT WITNESS, SWORN

DIRECT EXAMINATION

BY MS. BERKOWITZ:

Q. Dr. Ericksen, can you please state your full name for the record.

A. Dr. Brenda Eriksen.

Q. And are you a practicing physician?

A. Yes.

Q. What type of physician?

A. I'm a pathologist.

Q. Where do you practice?

A. At Munster Community Hospital.

Q. What's the name of your practice?

A. Northwest Indiana Pathology Consultants.

Q. And when did you start that practice at Munster Community Hospital?

A. January 2003.

Q. In 2003, did you hire MMDS and Weichman and Associates to do some work for your medical practice?

A. Yes.

Q. And who were you primarily dealing with from those two entities?

A. Mr. Weichman.

Q. Is that Jack Weichman?

A. Yes.

1 Q. And do you see him here in the courtroom today?

2 A. Yes.

3 Q. And can you just give a general direction and what he's
4 wearing for the record?

5 A. He has a blue tie with --

6 THE COURT: No one is disputing that this is
7 Mr. Weichman, so proceed.

8 BY MS. BERKOWITZ:

9 Q. Can you tell us why you hired Mr. Weichman?

10 A. We had -- my former business parter, who ultimately left
11 the practice, we were working with -- well, they weren't the
12 Franciscans at the time, but we were with St. Margaret
13 Hospital, and a business opportunity arose to do business with
14 Munster Community Hospital, so she pursued that with
15 Mr. Weichman.

16 Q. What kind of services did MMDS and Weichman and Associates
17 provide to your practice?

18 A. They provided billing services, accounting services, and
19 practice management services, which would include credentialing
20 of physicians at the hospitals and dealing with healthcare and
21 malpractice and issues like that.

22 Q. That seems pretty comprehensive. Is that kind of service
23 unique for the Northwest Indiana area?

24 A. Yeah, it's unusual to have a business entity handle all of
25 those pieces.

1 Q. So would it be fair to say that among the things that
2 Weichman and Associates and MMDS did for you was manage the
3 financial end of your practice?

4 A. That's correct.

5 Q. And when you initially started working with Jack Weichman,
6 would you go to his office and sign checks?

7 A. Yes.

8 Q. Did there come a point in time, though, where
9 Defendant Weichman asked you to get a stamp instead?

10 A. Yeah, he proposed a stamp. He said that it would make --
11 because we're busy at the hospital, it would make it easier for
12 me and for him to conduct business, essentially.

13 Q. So that meant he could just write a check and use your
14 stamp whenever he wanted to or needed to, is that right?

15 A. That's correct.

16 Q. Did he ever tell you in advance when he was using your
17 stamp?

18 A. No.

19 Q. Did he ever tell you after the fact when he was using your
20 stamp?

21 A. No.

22 Q. Did you have a business bank account at Centier Bank?

23 A. I'm sorry?

24 Q. Did you have a business bank account? Did Northwest
25 Indiana Pathology Consultants, did they have a business account

1 at Centier Bank?

2 A. Yes.

3 Q. By the way, what about your business records, your
4 statements, your canceled checks, things like that, where did
5 those go to? Did they go to your home, or did they go
6 somewhere else?

7 A. I never received them. I presume they went to
8 Mr. Weichman's office.

9 Q. In 2004, did you have a conversation with Jack Weichman?
10 You were unhappy with some billing practice that MMDS was
11 engaging in, is that right?

12 A. Yeah. After my partner left, who was doing --

13 THE COURT: Dr. Erickson, can I get you to back off
14 the microphone?

15 THE WITNESS: Oh, is it too loud?

16 THE COURT: There's a lot of feedback there.

17 THE WITNESS: Oh, sorry.

18 After my business partner left, when she left, she raised
19 concerns that there were issues with the billing, that Weichman
20 and Associates were, in her words, underpowered, and we had --
21 part of Hammond Pathologists was an outpatient business we had
22 that came in under the business umbrella of Pathology Solutions
23 when it was handled by Weichman, and we did know that we had a
24 lot less receipts at the time.

25 So after she left, which was -- I think we closed out with

1 her in late 2005. I sat down with him in the spring after I
2 had an opportunity to look at the billing and the receipts, and
3 indeed, she was correct, it was nowhere near what it had been.
4 And I raised concerns with him about the billing and what was
5 going on with it.

6 Q. And what was his response when you --

7 A. He basically told me that he was the financial guy and
8 that he took care of the billing and that was that and
9 everything was fine and that I was supposed to be taking care
10 of the hospital, essentially.

11 Q. Did you pursue that further?

12 A. No.

13 Q. Why not?

14 A. At the time -- so, you know, the pre-existing pathologist
15 who owned -- I don't know the name of the business entity --
16 who left -- who we replaced at Community, you know,
17 Mr. Weichman was very instrumental in getting rid of him, if
18 you will, and concluding a deal and getting us in there, and
19 then my business partner left under the -- I don't know why
20 exactly.

21 So I was essentially afraid that Mr. Weichman had a
22 relationship with the hospital and had some way orchestrated
23 all these things. And, essentially, I was afraid that if I
24 rocked the boat anymore that there would be consequences, so I
25 just moved on.

1 Q. Was the former pathologist Dr. Domenico Lazzaro?

2 A. Yes.

3 Q. From 2003 to 2008 -- at any point in time from 2008 to
4 January of -- 2003 to January of 2008, did Jack Weichman ever
5 ask you or Northwest Indiana Pathology Consultants for a loan?

6 A. No.

7 Q. At any point in time from 2003 to January 2008, did any
8 representative of MMDS ask you or your business for a loan?

9 A. No.

10 Q. Let me show you now Centier -- part of Centier 11D and
11 Bates page 096.

12 Dr. Ericksen, you see before you a check from MMDS made
13 out to Northwest Indiana Pathology Consultants. Is that your
14 business?

15 A. Yes.

16 Q. And you have an account at Centier Bank, is that right, or
17 you had, for Northwest Indiana Pathology Consultants?

18 A. Yes.

19 Q. Do you recall at any point in time that you had loaned
20 Jack Weichman or his business, MMDS, \$300,000?

21 A. No.

22 Q. Can you explain why there would be a check made out from
23 MMDS to your business on January 15, 2008, for \$300,000?

24 A. No, I have no idea.

25 MS. BERKOWITZ: I'm sorry. That's Centier -- this is

1 part of Centier 13B, I believe.

2 Q. What was your relationship like with Jack Weichman from
3 2003 to 2008; were you friends?

4 A. Like I said, at the beginning, I was a little bit
5 intimidated and afraid of him. But over time, actually I grew
6 very fond of him.

7 Q. But did you ever give him -- given your fondness for him,
8 did you ever give him the authority to help himself to any of
9 your money out of your business account?

10 A. No.

11 Q. I'd like to direct your attention to 2014. Did you become
12 aware in 2014 that \$750,000 had been transferred out of your
13 business account into a bank account held at Centier under the
14 name of David Ashbach?

15 A. I became aware of it when a federal agent, Brian Visalli I
16 believe his name is, called me on a particular afternoon to say
17 that this had occurred; and he asked to come out the next day
18 to show me the checks to ask me to verify or just, you know,
19 talk about it.

20 Q. Dr. Ericksen, did you end up hiring a forensic accountant
21 to go through your business records?

22 A. Yes. When Mr. Visalli came -- well, you know, because it
23 is a federal investigation, I didn't know what any of it was
24 about or what was going on. That Thursday afternoon when Brian
25 had called me, I immediately contacted an attorney to, you

1 know, help me out because I didn't know what was going on. And
2 then he sat with me with Brian the next day, and then I ended
3 up -- when we learned of what had happened, I got -- had to get
4 a new accountant.

5 I was informed that I could no longer do business with
6 Mr. Weichman since he was having this issue. So I had to get a
7 new accountant, and it was at that point we decided we better,
8 you know, see if there was additional loss than just what was
9 identified.

10 Q. So up until the point you were visited by Agent Visalli
11 and he showed you that there was hundreds of thousands of
12 dollars being taken out of your account and gambled at casinos,
13 you were still using Jack Weichman as your accountant?

14 A. Yeah. I didn't know that it was done. I mean, I didn't
15 know that he had stolen from me.

16 Q. And when you realized he had stolen from you, did you fire
17 him?

18 A. Yeah. Well -- yeah, as soon as that happened.

19 Q. Do you have any relationship with any Jack Weichman
20 associated business, MMDS, Weichman and Associates?

21 A. No.

22 Q. Now, you said you did hire an attorney and a forensic
23 accountant after, in 2014, you became aware of this loss. Did
24 you try and get your financial records from the defendant?

25 A. We did try, and we got a few things, but most of it was

1 not produced for us. He indicated that it was destroyed in a
2 flood.

3 Q. So you didn't get everything?

4 A. No.

5 Q. Did you file a lawsuit?

6 A. No.

7 Q. Why didn't you file a lawsuit?

8 A. Fundamentally, there's -- there was this going on, and we
9 knew that there would be potentially restitution. I thought
10 that hiring an attorney and going through a civil suit to
11 address potential other losses would probably not be worth it.

12 And, quite honestly, you know, as a physician in the
13 community, even though I'm a victim, I didn't want my name in
14 the papers associated with Mr. Weichman. I think that, you
15 know, it just wasn't going to look good. And, fundamentally,
16 I'm just not personally the type of person that seeks
17 vengeance.

18 Q. Were you also aware of the lawsuit that Domenico Lazzaro,
19 Dr. Lazzaro, had brought against the defendant and the length
20 of time and the amount of money that it had cost him to bring
21 that lawsuit against the defendant?

22 A. Yeah. When we came in 2003, Mr. Weichman indicated that
23 Dr. Lazzaro would be probably suing him for tortious
24 interference, basically influencing us getting in. And I think
25 that I always -- then there was a trial, and Jack had a lot of

1 emotional distress during the trial, and, you know, I always
2 assumed it was pertaining to tortious interference. I didn't
3 find out until much later that it was actually due to theft.

4 **THE COURT:** Can I just have some clarification? So
5 Dr. Lazzaro was with the pathology group who had the contract
6 with MCH prior to your group having it?

7 **THE WITNESS:** Yes.

8 **THE COURT:** Okay.

9 **BY MS. BERKOWITZ:**

10 **Q.** Doctor, you mentioned restitution, that you thought you
11 would get some restitution. Is it not true that just today
12 attorney Bennett approached you and your attorney, Vis Kupsis,
13 in the cafeteria of the federal building and handed you a check
14 for \$119,000?

15 **A.** Yeah, he came just this morning. Actually, Mr. Kupsis
16 wasn't yet here, so it was just me alone. And then when
17 Mr. Kupsis arrived, I showed it to him.

18 **Q.** Now, you had never been offered a check previously, had
19 you?

20 **A.** No.

21 **Q.** No one mailed you a check, no one contacted your attorney
22 to offer you a check, had they?

23 **A.** No.

24 **MS. BERKOWITZ:** If I could have a moment. I have no
25 further questions, Your Honor.

1 **MR. BENNETT:** Just briefly.

2 **THE COURT:** Yes. Mr. Bennett, cross.

3 **CROSS-EXAMINATION**

4 **BY MR. BENNETT:**

5 **Q.** Dr. Ericksen, I think I'd mentioned this morning, we
6 hadn't spoken to you before, your attorney had not permitted
7 that, is that correct?

8 **A.** Yes.

9 **Q.** And so the first time I ever saw you was in the cafeteria
10 today, is that correct?

11 **A.** Yes.

12 **Q.** And at that time, I gave you a check for \$119,000?

13 **A.** Yes.

14 **MS. BERKOWITZ:** Could we show this?

15 **Q.** Is this a true and accurate copy of the check that you
16 were given this morning?

17 **A.** Yes.

18 **MR. BENNETT:** We move the admission of Exhibit 25,
19 Your Honor.

20 **THE COURT:** Any objection?

21 **MS. BERKOWITZ:** No objection.

22 **THE COURT:** Twenty-five is admitted.

23 **BY MR. BENNETT:**

24 **Q.** I think we'd asked you also to what extent are you
25 acquainted with or know Dr. Ashbach?

1 **A.** I don't -- I have an acquaintance with him. I couldn't
2 recognize him. I'm not even sure I could recognize him today,
3 and we don't do business with him.

4 **Q.** You are not in the same practice, specialty, at all, are
5 you?

6 **A.** Oh, no, not at all.

7 **Q.** Last question. Do you accept Mr. Weichman's apology for
8 what he did?

9 **A.** Yes. I mean, I understand that it is -- my loss is money.
10 I didn't -- he didn't hurt anybody, to me, like a family member
11 or whatever, so I moved on.

12 **MR. BENNETT:** Thank you, Doctor.

13 **THE COURT:** Do you have any follow-up --

14 **MS. BERKOWITZ:** I do not, Your Honor.

15 **THE COURT:** -- Ms. Berkowitz?

16 Dr. Ericksen, thank you. You are excused.

17 **THE WITNESS:** Thank you.

18 **THE COURT:** Ms. Berkowitz, you may call your next
19 witness.

20 **MS. BERKOWITZ:** The government calls
21 Dr. Domenico Lazzaro.

22 **THE COURT:** Dr. Lazzaro, if you would, please come
23 forward, sir.

24 Sir, if you would, please, raise your right hand to be
25 sworn in.

1 (The oath was administered.)

2 **THE WITNESS:** I do.

3 **THE COURT:** Ms. Berkowitz.

4 DOMENICO LAZZARO, GOVERNMENT WITNESS, SWORN

5 **DIRECT EXAMINATION**

6 **BY MS. BERKOWITZ:**

7 **Q.** Dr. Lazzaro, would you please state your full name for the
8 record?

9 **A.** Domenico Lazzaro, L-A-Z-Z-A-R-O, is my last name.

10 **Q.** Dr. Lazzaro, are you a physician?

11 **A.** Yes.

12 **Q.** Are you still practicing?

13 **A.** No.

14 **Q.** What type of physician are you?

15 **A.** I'm a pathologist, pathology and nuclear medicine.

16 **Q.** I'm sorry?

17 **A.** Pathology and nuclear medicine.

18 **Q.** Nuclear medicine?

19 **A.** Correct.

20 **Q.** Thank you. And when did you retire?

21 **A.** December 2002. My contract was not renewed.

22 **Q.** Your contract was not renewed where, Doctor?

23 **A.** Community Hospital.

24 **Q.** Were you the pathologist at Munster Community Hospital?

25 **A.** Correct.

1 Q. Prior to 2002?

2 A. Correct. I was there from 1980.

3 Q. Now, while you were a pathologist working at Munster
4 Community Hospital, who handled your finances?

5 A. Jack Weichman. I met him in 1982, was referred to me by
6 another physician as a smart accountant and financial adviser.
7 He told me he was a financial adviser. And so I started
8 business at the time.

9 Basically, he handle all the activities of the accounting.
10 Later on, I got involved in multiple different business at his
11 recommendation.

12 Q. Was this investments?

13 A. Correct. About six different entities was invested
14 together with another partners -- my other partner, Dr. Pabon.

15 Q. So would it be correct to say that Jack Weichman handled
16 your investments, he did your tax returns, and did he do
17 anything with your medical practice? Did he run your medical
18 practice?

19 A. From 1982 through 1987 was basically the accounting --
20 basically, my personal accounting and then some personal
21 investment. In 1987, the contract was renewed at the hospital,
22 and he saw the opportunity to do billing, which he had never
23 had before, so billing called MMDS. He started billing, and he
24 told me that I help him, to give him \$20,000 to purchase a
25 computer.

1 Q. Doctor, I don't mean to cut you off, but let's -- I just
2 want to kind of make sure --

3 A. Okay.

4 Q. -- that we're not wasting the Court's time. So let's just
5 focus on exactly what Jack Weichman did for you.

6 He did at some point do your billing, is that right?

7 A. He did the billing.

8 Q. He also handled your -- some of your investments?

9 A. Investment, correct.

10 Q. He did your tax returns?

11 A. Tax return, yes.

12 Q. Okay. And where would that information, the investment
13 quarterly statements, things like that -- did they come to your
14 house?

15 A. No, everything was in his office.

16 Q. Everything went to Jack Weichman?

17 A. Yes.

18 Q. It sounds like you knew Jack Weichman for quite some time.

19 A. Yes.

20 Q. Would you consider him -- at the time before the lawsuit,
21 did you consider him to be a friend?

22 A. Sort of a friend, yes. In a way, he seemed to be smart
23 enough to help me financially because I was just dedicated to
24 pathology and nuclear medicine. I didn't have any knowledge of
25 finances or buying stocks and things like that. He had all of

1 that.

2 Q. Did you trust Jack Weichman to handle your finances, your
3 investments?

4 A. Yes. At the beginning, yes.

5 Q. Did there come a point in time, though, when you had
6 questions about some of your investments?

7 A. We began to see some losses in the businesses that failed.

8 Q. These are your investments with Jack Weichman?

9 A. Correct. Broadmoor, one of those.

10 Q. Let me --

11 A. Broadmoor Country club.

12 Q. Can I stop you for a moment. Broadmoor Country Club. Was
13 David Ashbach an investigator in Broadmoor Country Club?

14 A. No.

15 Q. Do you know David Ashbach?

16 A. Yes.

17 Q. What's your assessment of his abilities and knowledge
18 regarding finances and investments?

19 A. I don't know about his finances. I'm assuming that we
20 all -- we're physicians. We're not doing any finances. But --

21 Q. Would you consider him a sophisticated investor?

22 A. I don't know about that. I don't -- I dealt with him a
23 few times doing certain medical issues. That's about it. And
24 I knew him because he was also a client of Jack Weichman and
25 also was a partner in some of the partnerships we had, such as

1 U.S. 30 Partnership, which was a restaurant and buildings and
2 so forth.

3 Q. But not a partner -- not invested in Broadmoor, is that
4 right?

5 A. No, definitely not.

6 Q. Now, when you questioned Jack Weichman about your
7 investments and the losses, did he patiently sit down with you
8 and explain what was going on?

9 A. Not really. Not that much.

10 Q. Did Jack Weichman threaten you when you raised concerns
11 about your investments?

12 A. Well, he wasn't too happy when I asked questions, and
13 there was an issue that became a problem. The two -- my
14 partner in Broadmoor -- there were two more. They left, two
15 other doctors, because they were not happy with the answers and
16 things. So when I talked to him, I said: Jack, I'm not sure
17 this is going anywhere.

18 He says: Stay with me because we're going to have a
19 monopoly. We're going to have restaurants, business,
20 apartments, hotels, and you are going to make a lot of money.

21 It was totally reverse. I lost all the money.

22 Q. And did you continue to question him about these losses?

23 A. Yes. Every time I questioned him, he said that, You know,
24 I have all the papers, and that way I keep everything in my
25 office.

1 Q. Did you file a lawsuit in 1998 against Jack Weichman and
2 his related businesses?

3 A. Yes.

4 Q. And when you filed that lawsuit, did Jack Weichman make
5 any comment to you?

6 A. (No response.)

7 Q. Did Jack Weichman threaten to ruin you, Dr. Lazzaro?

8 A. Oh, yeah, he did that many times. All the time he said he
9 was going to ruin me, he was going to know what I was doing.
10 The issue was that I tried to do an estate planning, and he
11 refused to give us any document, absolutely, completely.

12 There was an attorney in Chicago that was flabbergasted
13 with the verbal abuse, and we couldn't explain why. He reacted
14 like a very vicious person, and he did it many times, and he
15 threatened me. And when he came to my office for the contract
16 of the hospital, he said -- we terminated the contract because
17 problem with the billing, severe billing problems. And he said
18 to me: You don't know who you are dealing with. I'm going to
19 ruin you. I'm going to take your job, and you won't have a
20 contract anymore.

21 Q. Did that come to pass?

22 A. Exactly. Two thousand and -- I was called by
23 administration.

24 Q. Doctor --

25 A. Sorry. Let me say --

1 Q. Let's just answer the question.

2 A. Yes.

3 Q. Did that come to pass?

4 A. Yes. I lost my job, yes.

5 THE COURT: How old were you at the time?

6 THE WITNESS: Fifty-nine. And I was not ready to
7 retire.

8 BY MS. BERKOWITZ:

9 Q. Dr. Lazzaro, did Jack Weichman threaten to tell your wife
10 that you had been unfaithful?

11 A. Oh, he did that many times. He did it with everyone else.

12 Q. And was that in conjunction with this lawsuit?

13 A. Yes. He has a habit of attacking me all the time, even in
14 depositions, outside the courtroom. He would whisper in my ear
15 all the time abusive stuff. I can't even mention in the
16 courts. He is a bad person.

17 Q. This lawsuit that you brought against Jack Weichman, did
18 it go to trial?

19 A. Yes.

20 Q. And did you prevail? Did you win?

21 A. We went to a lengthy trial, litigation, for 20 years. The
22 last -- we supposed to have trial in 2006, and he canceled
23 because of some illness. 2008, he declare bankruptcy.
24 Finally, 2009, 2010, we completed the litigation; and
25 Judge Davis awarded us \$1.2 million. I haven't seen one cent,

1 one penny. I was hoping I get a check today, but I haven't
2 seen it.

3 Q. You haven't received any money from Jack Weichman, have
4 you?

5 A. No. Zero.

6 Q. No check?

7 A. He said he will never -- I'll never get one penny. He
8 told me that day of 2008, prior to 2008, You won't get one
9 penny, and if you sue me, I'm not going to pay anything. I'm
10 going to move to Israel.

11 Q. Doctor, how old are you right now?

12 A. I'm 75.

13 Q. How much money did you lose as a result of your
14 investments with Jack Weichman?

15 A. (No response.)

16 Q. Well, let me remove that question.

17 How much money have you spent in pursuing justice from
18 Jack Weichman?

19 A. Well, last I saw, the billing we haven't paid yet is close
20 to \$1.7 million. I had to take a loan from the bank to pay the
21 attorneys. I'm paying a little monthly at a time. I have not
22 be able to save any money.

23 I have three boys went through medical school, and I
24 couldn't pay their loan. They're still paying their student
25 loan because he took all my money. It is gone.

1 I have two brothers -- a brother and two sisters that live
2 in a communist country, Venezuela, and I have been trying to
3 help them. I can't help them anymore.

4 **Q.** Dr. Lazzaro, is there anything else you think the Court
5 needs to know about Jack Weichman?

6 **A.** Jack Weichman is a vicious, vile person. He has done
7 terrible thing to me.

8 I'm 75 years old. Now, imagine that you spent the last 25
9 years of your life, one turn of a century, dealing with this
10 individual who took all my money. He's a fraud. He stole
11 money, wrote checks without authorization, forged my signature
12 and my wife's signature and took all the money. And he should
13 be responsible for that. He deserve the maximum penalty.

14 **MS. BERKOWITZ:** I have no further questions for the
15 witness.

16 **THE COURT:** Do you have any questions?

17 **MR. GURLAND:** No, Your Honor.

18 **THE COURT:** Dr. Lazzaro, thank you, sir. You may
19 step down.

20 **THE WITNESS:** Thank you.

21 **THE COURT:** Who is your next witness, Ms. Berkowitz?

22 **MS. BERKOWITZ:** It would be David Ashbach.

23 **THE COURT:** How long is he going to take?

24 **MS. BERKOWITZ:** I assume it will take a while,
25 especially on cross. He is not here until 12:30, Your Honor.

1 **THE COURT:** Do you have anybody else you can put on
2 here?

3 **MS. BERKOWITZ:** I can put Jennifer Prokop on the
4 stand.

5 **THE COURT:** Again, why don't you tell me what she's
6 going to testify to.

7 **MS. BERKOWITZ:** I think I kind of outlined her
8 testimony in --

9 **THE COURT:** Do it again, please.

10 **MS. BERKOWITZ:** Okay. If I could just refer to my
11 sentencing memorandum. She's going to testify that a Chapter
12 11 debtor has a fiduciary and statutory obligation to preserve
13 and maintain the bankruptcy estate to a maximum value for all
14 creditors; that the operating order that was put in place at
15 the beginning of the bankruptcy stays in effect even when a
16 plan has been put into place, as it was in this case. And that
17 means that defendant is prohibited from wasting assets or using
18 assets of the bankruptcy estate without permission, especially
19 in the situation where he obtained a loan. He encumbered MMDS,
20 which is one of the only two entities that were a source of
21 income for him to pay creditors. He encumbered MMDS to the
22 tune of \$190,000. That should have been run by the bankruptcy
23 estate.

24 **THE COURT:** That was the issue we talked about in
25 Mr. Schaefer's sentencing, correct?

1 **MS. BERKOWITZ:** Yes.

2 **MR. GURLAND:** Yes, Your Honor.

3 **MS. BERKOWITZ:** Yes, Your Honor. But at
4 Mr. Schaefer's sentencing, remember, Schaefer was charged and
5 pled guilty to a bank fraud. This is bankruptcy fraud.

6 **THE COURT:** I fully understand that. What -- as I
7 understand the issue that's before me, for purposes of the
8 amount of the loss for the bankruptcy fraud, it is this:
9 Should he be held accountable for the amount of the debt that
10 he was attempting to --

11 **MS. BERKOWITZ:** Discharge.

12 **THE COURT:** -- discharge through his bankruptcy?
13 That's option A. Option B is: What did he intend by way of
14 the fraud? Was it the amount that he was actually concealing
15 from the estate? Those are kind of my two options.

16 Is that right?

17 **MS. BERKOWITZ:** Well, it would seem really the only
18 option --

19 **THE COURT:** Well, that --

20 **MS. BERKOWITZ:** Right.

21 **THE COURT:** That's the terms of the dispute. So
22 those are legal questions. I don't want to hear from, with all
23 due respect, Ms. Prokop unless it is going to help me answer
24 those questions, because that's the only disputed issue.

25 **MS. BERKOWITZ:** Then I guess the question is what the

1 Court understands is part of the bankruptcy estate. So what
2 assets is he obligated to disclose and make part of the
3 bankruptcy estate? If the Court has a question about that,
4 then certainly the testimony of Jennifer Prokop would be
5 helpful.

6 **THE COURT:** Okay.

7 **MS. BERKOWITZ:** I'm asking the Court, Your Honor, if
8 you have a question about what assets -- the -- and I guess
9 also she would explain to you how we come to what has been
10 discharged in bankruptcy. And she can walk the Court
11 through -- if the Court is comfortable with the \$2.3 million
12 loss, but I don't believe we are, then I think you need to let
13 Trustee Prokop kind of walk us through how he is discharging
14 it, what we are basing that information on so you see what he
15 has identified as, you know, his debts, what he's discharging,
16 as you can see in the amended plan, which is an expression of
17 his intent, what he intends to discharge.

18 And if that is something that we can agree to, then I
19 don't need to call her, but if that's something that's in
20 dispute, I think she needs to testify.

21 **THE COURT:** All right. Call her.

22 Raise your right hand, please, to be sworn in.

23 (The oath was administered.)

24 **THE WITNESS:** I do.

25 \\\

JENNIFER PROKOP, GOVERNMENT WITNESS, SWORN

DIRECT EXAMINATION

BY MS. BERKOWITZ:

Q. Ms. Prokop, can you please state your full name for the record?

A. Jennifer Wiggins Prokop.

Q. How are you employed, Ms. Prokop?

A. Yes, I am.

Q. No, how are you employed?

A. How. I work for the U.S. Trustee Program. I'm a trial attorney there.

Q. In what district?

A. In the Northern District of Indiana.

MR. GURLAND: Just trying to shorten it. We went through all of this at Mr. Schaefer's sentencing already, so I don't know that there's the need to have any background about the U.S. --

THE COURT: Yeah, I fully remember all about her background from Mr. Schaefer.

BY MS. BERKOWITZ:

Q. Ms. Prokop, are you familiar with Chapter 11 bankruptcies?

A. Yes.

Q. In a Chapter 11 bankruptcy, what role does the debtor play?

A. The debtor files the case and is looking for protection

1 from creditors to hold off collection activity so that he or
2 she or the business can reorganize and pay the debts that it
3 can afford and discharge the remaining.

4 **Q.** Is there some fiduciary responsibility that the chapter
5 debtor -- Chapter 11 debtor holds that is not true in, let's
6 say, other chapters, like a 7 bankruptcy?

7 **A.** Yes. In a Chapter 11, unlike other chapter bankruptcies,
8 like a 7 or a 13, in a Chapter 11, the debtor-in-possession is
9 the trustee of the case. So there isn't going to be a third
10 party who would administer payments to creditors. In a 7 or a
11 13, we appoint a trustee in those cases to handle those
12 matters.

13 **Q.** Does that mean, then, that it is wholly dependent on the
14 debtor, functioning as the trustee, that they are going to
15 provide accurate information to the bankruptcy court and the
16 bankruptcy creditors?

17 **A.** That is correct. The debtor has that responsibility. He
18 has a fiduciary duty to bring in as much as he can to be able
19 to pay his creditors.

20 **Q.** Would that be preserving and maintaining the estate to
21 maximize what the creditors are going to receive?

22 **A.** That is correct.

23 **Q.** How would a Chapter 11 debtor's ability to pay creditors
24 be evaluated? What are the things that are being looked at by
25 creditors to determine how much they can realistically get?

1 **A.** The first thing a creditor should look at are the
2 schedules filed by the debtor. So that's information about
3 everything from the debts they owe as of the date of filing,
4 their income and their expenses as of the date of filing. And
5 in Chapter 11, a debtor is required to report on a monthly
6 basis all of the income the debtor receives and all of the
7 expenses.

8 **Q.** Would that be something that would appear in an operating
9 report -- or should appear in an operating report?

10 **A.** Yes.

11 **Q.** Are you familiar with the Chapter 11 bankruptcy filed by
12 Jack Weichman?

13 **A.** Yes.

14 **Q.** That was filed in October of 2008, is that correct?

15 **A.** Yes.

16 **Q.** I'm showing you what's marked as Prokop No. 2.

17 **MS. BERKOWITZ:** I'd move to admit Prokop No. 2, which
18 is a bankruptcy document No. 36.

19 **THE COURT:** Any objection?

20 **THE WITNESS:** No objection. Can I see --

21 **THE COURT:** I'm not asking you.

22 **THE WITNESS:** Oh, sorry. I'm sorry.

23 **THE COURT:** You're the witness today.

24 **THE WITNESS:** I'm so used to being at the table. I
25 apologize.

1 **MR. GURLAND:** Your Honor, I move for the admission of
2 all the government's exhibits and all the defendant's exhibits
3 in the binder.

4 **THE COURT:** Okay. Yes. Just go ahead and use them.

5 **MS. BERKOWITZ:** Thank you.

6 **BY MS. BERKOWITZ:**

7 **Q.** Taking a look at Prokop No. 2, does this document, then,
8 identify the total amount of liabilities that Jack Weichman has
9 that brings him into bankruptcy?

10 **A.** It does except for one thing. I know on Schedule F the
11 debtor listed some creditors as having unknown and disputed
12 claims. So the amount of liabilities might be measured also by
13 the claims that are filed. But, yes, this is what the debtor
14 listed as what he owed.

15 **Q.** Taking a look at Schedule F, that's for the unsecured
16 creditors, right?

17 **A.** That's correct.

18 **Q.** Those are creditors that don't have any kind of security
19 interest that holds their claim?

20 **A.** That's correct.

21 **Q.** And that total is \$1,380,380, is that right?

22 **A.** That's correct.

23 **Q.** Are you aware as to the reason -- the propelling reason
24 behind Jack Weichman filing a Chapter 11 bankruptcy?

25 **A.** The debtor stated in his plan that he filed bankruptcy

1 primarily for two reasons, to deal with a very large IRS debt
2 and to resolve or deal with litigation that's been going on
3 with Lazzaro, and I think it is Associated Pathologists --
4 Dr. Lazzaro.

5 Q. You spoke of a large IRS debt. I'm going to show you
6 what's been marked as Prokop No. 1. Is this the proof of claim
7 that was filed by the IRS regarding that debt?

8 A. That is correct.

9 Q. Okay. And the IRS identifies a debt of over \$2 million,
10 is that right?

11 A. That's correct.

12 Q. Of that debt, how much of that debt is secured?

13 A. 850,000.

14 Q. Unsecured is over \$1.3 million, is that right?

15 A. That's correct.

16 THE COURT: I'm sorry. What was the number of
17 unsecured?

18 MS. BERKOWITZ: \$1,369,684.40.

19 THE COURT: Can you explain that? I don't understand
20 how IRS debt can be secured or unsecured.

21 THE WITNESS: If the IRS has liens, then those liens
22 attach to pretty much everything that the debtor owns. And if
23 the IRS is able to establish the value of what the debtor owns,
24 the difference --

25 THE COURT: Those are the security?

1 **THE WITNESS:** Correct. And what's not secured by
2 those assets is unsecured.

3 **THE COURT:** Is there any prospect in a Chapter 11
4 that the entirety of an IRS debt is going to be discharged?

5 **THE WITNESS:** The entirety?

6 **THE COURT:** Yeah.

7 **THE WITNESS:** Only if someone has no property, which
8 would be unlikely; but with exemptions, it is possible.

9 **THE COURT:** Okay.

10 **THE WITNESS:** It is possible if someone doesn't own a
11 house or car or anything.

12 **THE COURT:** I just want to make sure I'm
13 understanding this. So if somebody has a giant debt to the IRS
14 and haven't paid their taxes in 10 years, they have a
15 \$2 million debt to the IRS, let's say, they file bankruptcy --

16 **THE WITNESS:** The only difference would be is how
17 recent is the debt. That would be the question to ask. The
18 bankruptcy code provides that if the debt is a recent debt,
19 then it is considered a priority unsecured, and it has to be
20 paid. In the bankruptcy, it is not discharged. If it is older
21 and there's no security for the liens to attach to, then it is
22 all unsecured and would be discharged, the entire debt.

23 **BY MS. BERKOWITZ:**

24 **Q.** In this case, Ms. Prokop, are you aware that the IRS debts
25 stem from a 1999 tax liability?

1 A. Yes, based on what was in the plan.

2 Q. That would be an old debt?

3 A. Yes, that would be an old debt.

4 Q. Are you aware, as to the source of funding, any repayment
5 to creditors in the Weichman Chapter 11 bankruptcy?

6 A. The debtor's plan and disclosure statement provided all of
7 the income to fund the plan would come from the debtor's two
8 places of employment, two of his companies; the Weichman and
9 Associates accounting firm, and MMDS, which I understand is a
10 medical billing firm.

11 Q. In fact, was that specifically stated by the defendant
12 during his 341 creditors meeting?

13 A. Yeah, that's correct.

14 Q. Also during the creditors meeting, did the defendant say
15 that none of his other businesses generated any income for him;
16 isn't that true?

17 A. That is true. And there was a question about one of the
18 companies, Northwest Medical something. I don't remember the
19 name of it. But he did -- he had in the past received some
20 income, but then I believe there's a secured lien on that
21 business, and the secured lender required a large insurance
22 policy in favor of the bank. So he said that is what depleted
23 the income from that company.

24 Q. He was also asked during that creditors committee meeting
25 if he got any income from Munster Restaurant, Incorporated, and

1 he said no.

2 A. He said no.

3 Q. He also said he didn't get any income from Woodhalapenos,
4 didn't he?

5 A. That's correct.

6 Q. And JAW Venture, no income?

7 A. No income.

8 Q. Now, he was asked about Broadmoor, too, at that creditors
9 committee meeting, wasn't he?

10 A. Yes, he was.

11 Q. And he identified three individuals who had an ownership
12 interest, did he not?

13 A. He did.

14 Q. One was Mr. Luke Paskala (phonetic), who had a 41-percent
15 interest?

16 A. Correct.

17 Q. Domenico Lazzaro, who had a 41-percent interest?

18 A. Correct.

19 Q. And then the defendant himself, who had 18 percent?

20 A. Right.

21 Q. The name David Ashbach was never mentioned as having an
22 ownership interest in Broadmoor?

23 A. No.

24 Q. Oh, also JAW Ventures, was that another one that he said
25 no income?

1 A. That's correct.

2 Q. Now, are there restrictions when you are a Chapter 11
3 debtor as to what you can do with money? You know, out of
4 these two businesses -- he's identified two businesses that are
5 going to fund the repayment of his creditors. Are there
6 restrictions on what the defendant can do with money that these
7 businesses are generating?

8 A. There are. There are restrictions in the bankruptcy code,
9 but more specific, soon after the case is filed, a
10 debtor-in-possession order or notice is entered early in the
11 case. And that order, in this case and in every Chapter 11,
12 says that the debtor can't incur debt without Court approval,
13 can't sell or transfer any property without Court approval.
14 There are lots of restrictions.

15 Q. I'm showing you what's been marked as Bankruptcy No. 3.
16 Is this the operating order -- or order that you are referring
17 to?

18 A. Yes, it is.

19 Q. And taking a look at the second page of that document, is
20 that where we would find, under paragraph 7, the express
21 prohibitions that are placed on a debtor, Chapter 11 debtor?

22 A. Yes.

23 Q. Now, it says here that you can use -- obtain credit or
24 incur unsecured debt, it seems like, if it were in the ordinary
25 course of business. It is prohibited to obtain credit or incur

1 unsecured debt other than in the ordinary course of business.

2 So my question to you is: Would a \$190,000 loan that,
3 let's say, MMDS got from a bank during the bankruptcy in, let's
4 say, 2010, would that be something in the regular course of
5 business, \$190,000 loan?

6 A. No, I do not believe so at all.

7 Q. Tell us why you do not believe so.

8 A. When we're talking about ordinary course of business,
9 unsecured debt, we are talking about something like a credit
10 card to Office Depot and an employee goes and buys paper and it
11 is paid at the end of the month. That's ordinary course.
12 That's something needed for the everyday operation that is not
13 a large expense. It is something just every day and ordinary.
14 A \$190,000 loan under any circumstance is extraordinary.

15 Q. So if, let's say, MMDS was paying, let's say, \$4,000 a
16 month to service that loan, would that be money that should be
17 going to the creditors?

18 A. It depends. If it is a business that's paying that debt
19 and Jack receives income from the business, we'd have to know
20 the impact of the loan on Jack's income. And then, yes, it
21 does impact what creditors receive.

22 Q. Were you aware that MMDS had a loan in the amount of
23 \$190,000?

24 A. No, not at all.

25 Q. Would it make a difference, this operating order, would it

1 make a difference whether or not it controlled the behavior of
2 the defendant or what he took out of his businesses if a plan
3 had been put in place?

4 **A.** No. This operating order is in place during the entire
5 course of the case.

6 **Q.** So even if a plan is in place, this order is in force?

7 **A.** That is correct. It does say in that order if there's a
8 material modification by another Court order, then it is
9 possible that something might be altered in there. But in this
10 case, I am not aware of anything that modifies that DIP order.

11 **Q.** In this case, what did -- do we have some indication as to
12 what the defendant was able to reduce his debts by, his --

13 **A.** The plan, when it was confirmed, provided a payment of
14 only \$60,000 to unsecured creditors.

15 **Q.** Would that be the amended plan, second debtor's -- second
16 amended plan?

17 **A.** That's correct.

18 **Q.** Bankruptcy 12?

19 **A.** Correct. It provided for one pool of \$60,000 that all of
20 the unsecured creditors would have to share pro rata.

21 **Q.** So in order to determine what the defendant attempted to
22 discharge, would you take a look at what we looked at
23 previously, Prokop No. 1, which is the IRS proof of claim, and
24 then Prokop No. 2, which is the statement of the schedules,
25 right?

1 A. Right.

2 Q. Schedule F, which identifies \$1.3 million.

3 And then would you take a look at the amended plan, what
4 the defendant was ultimately going to pay his creditors?

5 A. Yes. And you would also look at any claims filed for
6 those creditors that might not have been listed in the
7 schedules or if they disagreed with what the debtor put down.
8 So those claims count too.

9 Q. Let's just stop for a minute and digress. You said claims
10 filed.

11 A. Yes.

12 Q. In a Chapter 11, if the debtor identifies debt, he
13 identifies various creditors and no claim is filed. Does that
14 mean that there's no obligation to repay the creditor?

15 A. Absolutely not. In a Chapter 11, a creditor is not
16 required to file a claim at all to receive payment in the plan.
17 The bankruptcy code, and we announce this at the beginning of a
18 341 meeting of creditors, that if the debtor lists a claim
19 properly, then a creditor doesn't have to file a claim.

20 If the creditor doesn't like the way the claim is listed
21 in the schedules, the creditor has the option to file a claim,
22 and then the claim is the number that is the amount that would
23 be the allowed claim.

24 Q. Okay. Getting back to the second amended plan.
25 Considering the second amended plan in conjunction with

1 Prokop 1 and 2, would it be fair to say the defendant
2 discharged or intended to discharge roughly \$2.3 million of
3 debt?

4 **A.** At least that, yes.

5 **Q.** In the summary schedules that we're talking about, Prokop
6 No. 2, does the -- is a debtor required to identify how you
7 would get in contact with his creditors?

8 **A.** Yes. He's supposed to list their address in the
9 schedules.

10 **Q.** Okay.

11 **A.** If I could add to that, the schedules, when those are
12 filled out, that's the information that becomes the creditor
13 matrix, and that's what the bankruptcy clerk relies on to send
14 out the notices.

15 **Q.** So you have no independent knowledge of a proper address
16 for someone if it is not put down by the creditor on their
17 summary schedules?

18 **A.** That's correct.

19 **Q.** Let's go and take a look again at Prokop No. 2. And
20 taking a look at the entry for David Ashbach, it identifies his
21 address as 9201 Calumet Avenue in Munster, Indiana. Does that
22 address sound familiar to you?

23 **A.** It does.

24 **Q.** Whose address is that?

25 **A.** That is Jack Weichman's business address for Weichman and

1 Associates and MMDS.

2 Q. And taking a look -- this is also part of Prokop No. 2,
3 page 21 of 23. In fact, there we see it.

4 A. That's correct. That Schedule I lists the debtor's place
5 of employment and his source of income, and there's the
6 address.

7 Q. How did someone fail to catch that, Ms. Prokop?

8 A. I think I can explain that a little bit. When this case
9 was filed, I was going on maternity leave, so I was not
10 involved in the beginning of the case. Another attorney in our
11 office was -- you know, took in the initial schedules. That's
12 the busiest time in a Chapter 11 until you get to the plan and
13 disclosure statements. So during that time, I was not part of
14 the 341 meeting of creditors, but I've listened to it many
15 times since the case was filed and since it was held.

16 When I entered my appearance in I believe it was August of
17 2009, that's when the debtor filed a disclosure statement, and
18 that's when I became involved in the case. So I think what
19 happened is, you know, someone who -- the attorney who had
20 taken over the case for me, Robin Tubesing, she was a very new
21 attorney. I think she was less than two years out of law
22 school, and I think she just missed it. And then later on, I
23 didn't have any reason to go and check the addresses of
24 creditors, so I missed it too, when it was time for the plan
25 and disclosure statement.

1 Q. Can you tell us roughly how many bankruptcies were filed
2 in the Northern District of Indiana in 2008?

3 A. In 2008, it was about 4400.

4 Q. So it would be kind of hard to individually monitor each
5 bankruptcy?

6 A. I would agree with that. It is.

7 And then the next year, as far as Chapter 11s go, when I
8 became involved in the case, we more than tripled the number of
9 Chapter 11s we had in this division, in this courtroom, in this
10 building.

11 Q. Are you aware that Dr. Ashbach did not file a claim in the
12 bankruptcy?

13 A. I am aware of it.

14 Q. Knowing what you know now and seeing what the address is,
15 does that surprise you?

16 A. No, it doesn't. He didn't get any notices of the
17 bankruptcy filing.

18 Q. Now, were there -- he didn't show up at the creditor
19 committee meeting?

20 A. No, he was not present.

21 Q. Would he have had an opportunity to contest -- would he
22 have received notice to contest the -- what was allegedly owed
23 to him?

24 A. Absolutely. He would have had an opportunity to file a
25 claim. He could have objected to the plan or the disclosure

1 statement.

2 Q. Now, what kind of information should be disclosed by the
3 debtor as far as assets? Does he need to disclose to -- in
4 Chapter 11, should Jack Weichman have had to disclose all of
5 his insurance policies that had cash surrender value?

6 A. He would have had to disclose everything he owns, and that
7 includes every insurance policy, whether it has a cash value or
8 not.

9 Q. What if he disclosed a policy to you and then in the
10 course of the bankruptcy he took out a loan on that cash
11 surrender value but didn't tell you about that?

12 A. In general, insurance policies with a cash surrender
13 value, if the beneficiary is a dependent or a family member, in
14 general, those are exempt, so they are not subject to being
15 distributed to creditors, okay. But if somebody cashes that
16 out, even during the course of a Chapter 11, then that changes
17 the status of that asset.

18 And in Chapter 11, unlike other chapters, the property of
19 the estate is not frozen on the day of filing of the
20 bankruptcy. In a Chapter 11, any property that the debtor
21 acquires during the course of a Chapter 11 is also estate
22 property. So if you cash out an insurance policy, that is no
23 longer an exempt asset, and it is property of the bankruptcy
24 estate.

25 And it needs to be disclosed on the monthly operating

1 report for the month that that cash is acquired because it is
2 income received, which you are supposed to report every month.

3 Q. Well, are you aware in January 2011 that Jack Weichman got
4 a \$91,487.55 check from the cash surrender value of
5 Northwestern Mutual payable to him?

6 A. I was not aware until reading these -- the documents filed
7 in this case.

8 Q. Were you aware he deposited that check into his son's
9 Centier money market account?

10 A. No.

11 THE COURT: Ms. Berkowitz, he's admitted to all this
12 in the plea agreement.

13 BY MS. BERKOWITZ:

14 Q. So those are things that should be included in the
15 bankruptcy estate?

16 A. Correct.

17 Q. This is money for the creditors?

18 A. It is money that would have been calculated into his
19 disposable income in the disclosure statement.

20 Q. Would that include any payments that he's making on credit
21 cards?

22 A. It would. He should not have been making payments on
23 credit cards unless they were in the ordinary course of
24 business, and they should have been disclosed.

25 Q. So would you say that, let's say, \$11,000 to a ticket

1 broker would not be in the ordinary course of business?

2 A. I would say that's not in the ordinary course of business.

3 Q. How about \$1200 for cigar purchases?

4 A. That is not the ordinary course of business.

5 Q. Were you aware during the bankruptcy that in January 2011
6 the defendant paid his daughter's credit card bill in the
7 amount of \$6,572.22?

8 A. No, not at all.

9 Q. Would you have wanted to have been aware of that?

10 A. Yes.

11 MS. BERKOWITZ: I have nothing further.

12 THE COURT: Are you going to have a lot of questions?

13 MR. GURLAND: No, I have very few questions.

14 THE COURT: Okay. We will get her done here, and
15 then we are going to take a break here for lunch.

16 CROSS-EXAMINATION

17 BY MR. GURLAND:

18 Q. Good afternoon, Ms. Prokop.

19 A. Hello.

20 Q. You testified previously before Judge Simon regarding the
21 U.S. Bank loan?

22 A. Yes.

23 Q. You recall that testimony?

24 A. I do.

25 Q. You recall telling Judge Simon that it was likely that

1 that loan would have been approved given that it was necessary
2 for the operation of MMDS?

3 **A.** I think my testimony was that it could have been approved
4 if he could show that in court.

5 **Q.** And you personally would have had no objection to that if,
6 in fact, it was the case that they needed to get the Allscripts
7 software to continue to operate MMDS?

8 **A.** If he would be able to show that, I don't think the U.S.
9 Trustee would have an objection.

10 **Q.** I have heard several times that the money obtained from
11 U.S. Bank for Allscripts was, quote-unquote, syphoned off from
12 the bankruptcy estate, and I have never understood that, but
13 that money would not have been made available to creditors,
14 correct?

15 **A.** Not directly, no, but its impact on Jack Weichman's income
16 is what makes it available to creditors. So if -- that's where
17 he drew his salary and bonuses.

18 **Q.** I don't understand what you are saying.

19 **A.** If MMDS takes out a large loan and is no longer to pay
20 bonuses to Jack Weichman, then that affects what he said he was
21 going to use to pay into this plan.

22 It is his company, and he determines what the expenses are
23 for MMDS. If he does so in such a way that it affects what
24 creditors are going to receive down the line, then there's an
25 impact there that at least the Court should know about and

1 creditors should have an opportunity to find out.

2 Q. Okay. But as I understand your testimony from last time,
3 if, in fact, it was the case that the money was going to be
4 used to purchase the Allscripts software, which it was, which
5 was necessary to operate MMDS, you personally think that's
6 something the bankruptcy judge would have approved?

7 A. If he was able to show that in court, yes.

8 Q. And we've also just been trying to get some clarity on the
9 intended loss for bankruptcy. As I understand your testimony
10 today, it is the unsecured IRS debt, which you said because is
11 an old debt, it potentially was dischargeable, and then it is
12 the amount contained in Schedule F, to the extent that they
13 were known amounts?

14 A. Correct.

15 Q. Okay. So the contingent unknown debt of Dr. Lazzaro is
16 not included in your computation for the intended bankruptcy
17 loss?

18 A. I can't decide what the intended bankruptcy loss is, but I
19 disagree with that. I believe that the amount that is now
20 known and determined to be the amount of the Lazzaro claim is
21 intended. He listed Dr. Lazzaro as a creditor with the
22 intention to discharge any debt to that creditor, and now we
23 know the amount. So I don't agree, but that's not for me --
24 that's not my call.

25 Q. Okay. But your testimony with respect to what this Court

1 needs to decide with regard to intended loss, it is just what's
2 contained in Schedule F, plus the IRS unsecured claim?

3 **A.** I don't know if I can make that decision, Judge. I'm not
4 a criminal law attorney.

5 **MS. BERKOWITZ:** I'm sorry. Can counsel repeat the
6 question?

7 **MR. GURLAND:** What I'm trying to determine, which is
8 why we were trying to get you on the phone, is your
9 computation --

10 **MS. BERKOWITZ:** Your Honor --

11 **THE COURT:** Well, did you answer his phone calls?

12 **MS. BERKOWITZ:** Your Honor, I actually did respond to
13 counsel repeatedly. There's repeated --

14 **THE COURT:** All right. Well, I can't sort that out,
15 so --

16 **MR. GURLAND:** I just want to make sure, while we have
17 this witness here --

18 **MS. BERKOWITZ:** This is a waste of the Court's
19 time --

20 **MR. GURLAND:** -- that there's no other element in
21 intended loss other than the totals in Schedule F and the IRS
22 unsecured debt.

23 **THE COURT:** What were the totals in the Schedule F?

24 **THE WITNESS:** In Schedule F, it was -- oh, it was up
25 here, but -- was it 1.3 million, I believe? And then

1 Dr. Lazzaro's determined claim is also now 1.3 million, and he
2 was listed as a creditor with the debtor's intent to discharge
3 that debt. So that's an additional 1.3 million, and then you
4 have the IRS debt.

5 **BY MR. GURLAND:**

6 **Q.** Okay. All right. So you understand at the time of the
7 bankruptcy Dr. Lazzaro's potential judgment was unknown?

8 **A.** Correct.

9 **Q.** And his partner, Mr. Pabon, who brought a similar claim,
10 his potential judgment was unknown?

11 **A.** Correct.

12 **Q.** And the judge actually determined that the
13 5-million-plus-dollar claim that Mr. Pabon made was, in fact,
14 worthless, correct?

15 **A.** I agree, correct.

16 **Q.** And the claim that Mr. Lazzaro originally brought for
17 \$35 million, which at the time of the bankruptcy was
18 potentially listed by him as worth \$5 million, a judge
19 determined, excluding attorneys' fees, interest and trebling
20 damages, was worth about \$35,000?

21 **A.** No, I think it was \$350,000. And then it was tripled to
22 1.3 million. Isn't that -- that's my understanding of it.

23 **MS. BERKOWITZ:** Your Honor, there's actually a
24 pleading.

25 **MR. GURLAND:** We'll rely on the victim impact

1 statement for that, Your Honor.

2 Q. Do you have any personal knowledge of the Lazzaro
3 litigation?

4 A. The Lazzaro engagement?

5 Q. Litigation?

6 A. I do. I have reviewed the judgments, the first judgment
7 and then the final judgment with the total amount.

8 Oh, I understand. I apologize. I was thinking Associated
9 Pathologists, which is also one of the litigants in that
10 lawsuit, and Associated Pathologists had the larger \$300,000
11 debt.

12 Dr. Lazzaro, I'm not sure what his exact -- the judgment
13 was on his individual claim.

14 Q. Without trebling damages, without attorneys' fees, without
15 interest, it was about \$35,000, isn't that correct?

16 A. I don't know.

17 MR. GURLAND: I have nothing further, Your Honor.

18 THE COURT: Anything else, Ms. Berkowitz?

19 MS. BERKOWITZ: Yes, Your Honor.

20 REDIRECT EXAMINATION

21 BY MS. BERKOWITZ:

22 Q. With respect to the \$190,000 loan, Ms. Prokop, you
23 indicated that if the defendant could make a case to who he
24 might be able to get that loan?

25 A. It would be to the Court with the creditors having an

1 opportunity and the U.S. Trustee having an opportunity to
2 object.

3 Q. Now, the money that -- but in this case, that didn't
4 happen, did it?

5 A. No, it didn't.

6 Q. So there's \$190,000 that went out the door that was not
7 made part of the bankruptcy estate. Would the creditors -- any
8 payment on that loan, how would that be factored in or how
9 would we see it or how should that be disclosed to the
10 creditors? If the plan is already in effect and debtor now
11 wants to get a loan for \$190,000, what would be the mechanism
12 whereby he would make that known to the creditors?

13 A. He would have to file a motion with the Court, a motion to
14 incur debt.

15 Q. Now, that debt, does that reduce the amount of excess cash
16 that would be available to creditors?

17 A. I believe it would, yes.

18 Q. Well, it logically makes sense, doesn't it; it is an
19 additional business expense?

20 A. I agree with that.

21 Q. So the creditors would have an opportunity to say yes or
22 no on that one?

23 A. Correct.

24 Q. And in this case, the creditors, the unsecured creditors,
25 had identified on -- or defendant identified on Schedule F

1 \$1.3 million in debt. They only got \$60,000.

2 A. Correct.

3 Q. Do you think, Ms. Prokop, that had the debtors been aware
4 the defendant could afford \$190,000 in debt service that they
5 would have wanted to know that and they might have wanted that
6 money instead?

7 A. Yes, because the \$60,000 comes from Jack Weichman's net
8 income, after income and expenses. And if his income should
9 have been higher because a business took out an unnecessary
10 expense, then that impacts that \$60,000 pool.

11 Q. Well, that's net income based on what the businesses are
12 generating for him, isn't that right?

13 A. Correct.

14 Q. And so no doubt that \$190,000 would adversely impact the
15 bottom line for MMDS?

16 A. I believe that it would.

17 MS. BERKOWITZ: I have no further questions.

18 THE COURT: If the 190,000 is used to purchase
19 software to keep the business generating income, that's not
20 necessarily the case then, correct?

21 THE WITNESS: I think what the hypothetical is,
22 Judge, is that there's no opportunity for a creditor to say,
23 well, can't you buy something less.

24 THE COURT: No, no, I appreciate that. He should
25 have gotten the clearance of the bankruptcy court. I totally

1 understand that point. But speaking more sort of
2 pragmatically, if they need the software to operate the
3 business to keep generating income, it was probably a wise
4 thing to do, right?

5 **THE WITNESS:** It was. It is just, Your Honor, in my
6 12 years in doing this, I've never heard of a \$190,000 computer
7 program for an office for any Chapter 11 debtor. I have never
8 heard of that expensive a program.

9 We have had motions to incur debt to pay taxes, for
10 example, like property taxes, things like that. The highest
11 loan ever that I have seen in my whole time here has been for
12 about 10- to 20,000. So \$190,000 is really unusual.

13 **THE COURT:** Okay. That's your experience. I
14 appreciate that.

15 **THE WITNESS:** Correct.

16 **MS. BERKOWITZ:** Your Honor, may I ask just more
17 question?

18 **THE COURT:** Sure.

19 **REDIRECT EXAMINATION (Resumed)**

20 **BY MS. BERKOWITZ:**

21 **Q.** Ms. Prokop, you said \$20,000 for a debt. What kind of
22 business was this? Was this a small mom and pop company?

23 **A.** If I remember correctly, it was a husband and wife, and
24 they owned real estate; and if they didn't pay the real estate
25 taxes, you know, when they came due, they were going to be in a

1 lot of trouble. So they asked the Court if they could use, I
2 think it was, a credit card or obtain a loan from a bank that
3 had -- that they had already asked and who agreed that they
4 would do it with Court approval.

5 Q. Have you seen debt service for larger corporations?

6 A. In some cases, yes.

7 Q. And what kind of a large corporation are we talking about?

8 A. Well, in 2009, we had a series of five -- I think they
9 were chiropractic pain clinics file in this division. And even
10 then, I don't remember four and \$5,000 a month for a computer
11 program.

12 Q. What kind of -- what were those businesses generating?

13 A. They were generating millions of dollars in income each
14 year.

15 Q. Millions of dollars in income each year?

16 A. Millions of dollars.

17 Q. Jack Weichman didn't identify that MMDS was generating
18 millions of dollars of income each year, was he?

19 A. No.

20 Q. Not during the bankruptcy?

21 A. No, not at all.

22 Q. By the way, just one more question on the gambling. Was
23 the defendant -- could he go out and gamble? Was that okay, or
24 would he have to disclose any gambling winnings he got to the
25 bankruptcy court?

1 **A.** I can't say that there is a prohibition in the bankruptcy
2 against gambling, but he would certainly have to disclose it.

3 The debtor every month has to report not only the income
4 that he receives but every expenditure, every expenditure, and
5 it is supposed to come out of his DIP bank account. That's
6 what the DIP order says. I can assure you we did not see any
7 expenses or information about any gambling.

8 **Q.** Did you see any winnings, gambling winnings?

9 **A.** No, no winnings. No winnings, no losses. And those are
10 the things that determine his net income, the pool that goes to
11 creditors.

12 **Q.** So gambling winnings should be disclosed to the bankruptcy
13 estate, right?

14 **A.** Yes, it's a monthly report. If he had winnings that
15 month, he should have reported it.

16 **Q.** And the failure to disclose that would be an asset that
17 was not disclosed to the bankruptcy estate and the debtor
18 should be accountable for?

19 **A.** That's correct.

20 **MS. BERKOWITZ:** I have no further questions.

21 **THE COURT:** Do you have anything?

22 **MR. GURLAND:** No, Your Honor.

23 **THE COURT:** Ms. Prokop, thank you so much. It was
24 actually very helpful. Appreciate it.

25 **THE WITNESS:** Thank you.

1 **THE COURT:** Why don't we break until 1:30. Just to
2 let you know, I have another sentencing at 2:30. It's going to
3 take about 20 minutes. So I'm going to fit that in, and then
4 I'll come back at -- about how much longer do you have?

5 **MS. BERKOWITZ:** I have another three witnesses, three
6 or four witnesses.

7 **THE COURT:** How much time? I have a doctor's
8 appointment I have to get to at five o'clock, and so that's
9 all.

10 **MS. BERKOWITZ:** I suspect that it would -- I don't
11 know that we are going to finish today, Your Honor, to be
12 realistic.

13 **THE COURT:** I have to hear from Dr. Ashbach. He'll
14 take some time. What's Hatagan going to tell me?

15 **MS. BERKOWITZ:** Tax, which is in dispute.

16 **THE COURT:** Okay. All right.

17 Oh, it's at two. I thought it was at 2:30. So why don't
18 we come back here, let's just say, in 30 minutes, 1:15, to give
19 people a chance to get something quick to eat, and then we will
20 pick back up. And then my other sentencing is at two, not
21 2:30. I was mistaken.

22 (A recess was had at 12:43 p.m.)

23 (The following proceedings were held in open court
24 beginning at 1:26 p.m., reported as follows:)

25 **DEPUTY CLERK:** All rise.

1 **THE COURT:** You can be seated. Sorry I'm running
2 late.

3 Ms. Berkowitz, you want to get your next witness in here.

4 **MS. BERKOWITZ:** We call David Ashbach to the stand.

5 **THE COURT:** Good afternoon, sir. Would you please
6 raise your right hand to be sworn in. This lady right here is
7 going to swear you in.

8 (The oath was administered.)

9 **THE WITNESS:** I do.

10 **THE COURT:** You may be seated.

11 **THE WITNESS:** Thank you.

12 DAVID ASHBACH, GOVERNMENT WITNESS, SWORN

13 **DIRECT EXAMINATION**

14 **BY MS. BERKOWITZ:**

15 **Q.** Dr. Ashbach, can you please state your full name for the
16 record.

17 **A.** David Lawrence Ashbach.

18 **Q.** Dr. Ashbach, how old are you?

19 **A.** Seventy-five.

20 **Q.** Are you married?

21 **A.** I am.

22 **Q.** And how old is your wife?

23 **A.** Seventy-four.

24 **Q.** Do you have any children still at home?

25 **A.** Yes, I do.

1 Q. And how old is that child?

2 A. Forty-five.

3 Q. Does that child have any medical or other issues?

4 A. He is autistic and severely mentally challenged.

5 Q. Has he always lived at home with you?

6 A. He has always lived at home with us.

7 Q. Do you want him to remain at home with you?

8 A. I do.

9 Q. Doctor, you are a physician?

10 A. I am.

11 Q. And what type of physician are you?

12 A. I'm a nephrologist.

13 Q. What is that, a kidney doctor?

14 A. A kidney doctor.

15 Q. Do you have any medical conditions yourself?

16 A. I'm diabetic, and I have cancer.

17 Q. Is this -- you say cancer. What type of cancer do you
18 have?

19 A. Merkel cell carcinoma. It is a neuroendocrine malignancy.
20 It is very, very similar to small cell lung cancer.

21 Q. Is this the first time that you have experienced a bout of
22 cancer?

23 A. I have been dealing with this malignancy since 2012.

24 Q. Doctor, have you been treated for the cancer?

25 A. I have had chemotherapy twice.

1 Q. When did you have chemotherapy the first time?

2 A. 2012.

3 Q. Okay. And when was the second time you had chemotherapy?

4 A. About two years ago.

5 Q. Have you had any other medical procedures prior to 2012
6 where you were under anesthesia or receiving any kind of pain
7 medication?

8 A. No.

9 Q. Do you currently experience any memory deficit issues?

10 A. I hope not.

11 Q. Doctor, you are a practicing physician still?

12 A. I am.

13 Q. Is it full time or part time?

14 A. Full time.

15 Q. And are you in a practice?

16 A. I am in a solo practice.

17 Q. Does that mean, then, that you are the only physician that
18 sees patients?

19 A. I'm the only physician in my group, yes.

20 Q. As a nephrologist, what are some of your responsibilities
21 vis-a-vis your patients?

22 A. I take care of critically ill patients in intensive care.
23 I take care of regularly hospitalized patients. I see
24 outpatients in the office, and I have patients in the dialysis
25 unit that I round on.

1 Q. Do you at times have to calibrate dosages for any
2 medications or treatments for your patients?

3 A. Yes.

4 Q. Does that require some mathematical skills, at least how
5 to compute something?

6 A. Not really.

7 Q. No, not really?

8 A. Not really.

9 Q. Okay. Does it require some analysis or -- does it require
10 any kind of skill, I guess?

11 A. I think so.

12 Q. Okay. What's the skill it requires, Doctor?

13 A. Knowing primarily what dose is appropriate for which
14 patient at what weight.

15 Q. So is there --

16 A. And with what degree of kidney failure.

17 Q. So is there some degree of analysis and memory involved in
18 that calculation?

19 A. Yes.

20 Q. Now, did you say you are working full time?

21 A. Full time.

22 Q. What is full time; how many hours a week?

23 A. I probably work about 50 hours a week, 50, 60. I work
24 seven days a week, so it's probably closer to 60 hours a week.

25 Q. Doctor, at 75, why are you still working full time 70

1 hours a week?

2 A. Because I can't afford to work part time.

3 Q. Can you tell us, why can't you afford to work part time?

4 A. Because my retirement funds just aren't there.

5 Q. Do you know why your retirement funds aren't there?

6 A. They -- they were taken from me.

7 Q. Who took them from you?

8 A. Mr. Weichman.

9 Q. Is that Jack Weichman?

10 A. Yes.

11 Q. Did you give him permission to take your retirement fund?

12 A. No.

13 Q. Let's talk a little bit about Jack. How do you know
14 Jack Weichman?

15 A. I joined Gumbiner & Associates (phonetic), a
16 multi-specialty group that was both Illinois and Indiana in
17 1975. At that time, Mr. Weichman was the accountant for that
18 group.

19 Q. Did he subsequently become your accountant?

20 A. Yes, he did.

21 Q. And has he been your accountant for several years?

22 A. He has been my personal accountant since 1983.

23 Q. Did that end at any point?

24 A. No.

25 Q. He's still your accountant?

1 A. No, that's not entirely true because about two years ago I
2 hired another accountant to do my personal accounting.

3 Q. Was this a forensic accountant?

4 A. I have a regular accountant, and I have a forensic
5 accountant.

6 Q. Did you hire these accountants after Jack Weichman was
7 indicted?

8 A. I'm not entirely certain whether it was just before or
9 just after he was indicted.

10 Q. Now, during the time that Jack Weichman was handling your
11 accounting work, was he handling your personal accounting work?

12 A. Yes, he was.

13 Q. Was he also handling your business accounting?

14 A. Yes.

15 Q. Did that include running your office?

16 A. Yes.

17 Q. Now, you say you are in solo practice right now, but prior
18 to being in solo practice, were you in a group practice?

19 A. Yes.

20 Q. What was the name of the group practice?

21 A. The last group was Northwest Indiana Nephrology.

22 Q. When you were in that group practice, who ran that
23 practice?

24 A. Mr. Weichman.

25 Q. What does that mean when you say Jack Weichman ran a

1 medical practice? He's not a physician, so what did he do?

2 A. He took care of billing. He took care of personnel
3 issues. He took care of accounting. He took care of seeing to
4 it that our information technology was current. He took care
5 of everything but patient care.

6 Q. So he was sort of a multipurpose kind of guy?

7 A. Right.

8 Q. And as a result of using Jack Weichman, you and your
9 partners did not have to go do these things yourselves, is that
10 correct?

11 A. Correct.

12 Q. Was the service that Jack Weichman provided, this
13 basically running your practice, credentialing people, hiring
14 people, billing too, I take it?

15 A. Yes.

16 Q. Was this unique to Northwest Indiana?

17 A. Fairly unique. You could arrange for each one of those
18 components through separate companies, but to have one
19 individual take care of everything from start to finish was not
20 usual.

21 Q. So that was unique?

22 A. That was unique.

23 Q. And if you were to go and do this each individual
24 component, for example, credentialing or hiring staff, you
25 would have to hire the person to do that for you, is that

1 right?

2 A. Correct.

3 Q. And then that would result in additional expense and
4 additional time, I take it?

5 A. Correct.

6 Q. So would it be fair to say that Jack Weichman was pretty
7 well enmeshed in your both professional and personal finances?

8 A. Yes.

9 Q. Did you trust him to handle your personal and professional
10 finances?

11 A. Implicitly.

12 Q. Why is that, Doctor?

13 A. That's a difficult question to answer right now, but I
14 did. I trusted him implicitly. He actually -- I was actually
15 in a situation with the first group I was with, which was
16 Gumbiner & Associates, which became Cardiovascular Renal
17 Consultants, and they had promised me full partnership at five
18 years. At eight-and-a-half years, I was still their employee.

19 I had information that they were, in several respects,
20 cheating me from some of my reimbursement, and it was
21 Mr. Weichman who got me free of that particular group because
22 he had also by that point left. And he helped set me up in
23 practice along with Dr. Michael Floyd and Dr. James Greenwalt.

24 Q. So did you feel some degree of gratitude to Jack Weichman
25 for helping you out of that situation?

1 A. That would be an understatement.

2 Q. How do you feel about that?

3 A. I think that he basically saved me and did a marvelous job
4 of helping me become a major changer of healthcare in Northwest
5 Indiana.

6 Q. Would you say that you also have a very close personal
7 relationship -- or had a very close personal relationship with
8 Jack Weichman?

9 A. I have a very close personal relationship with
10 Mr. Weichman.

11 Q. And do you consider him like a brother?

12 A. I consider him my brother.

13 Q. Is he, in fact, kind of like your brother in many ways,
14 similar traits to your brother?

15 A. Well, yes.

16 Q. What trait in particular?

17 A. Well, my brother, who I have now lost, helped himself
18 considerably to my assets every chance he had.

19 Q. So you are saying he stole money from you?

20 A. Correct.

21 Q. Jack was aware of that?

22 A. Jack would know about that, yes.

23 Q. Why would Jack know about that?

24 A. There wasn't much that went on in our lives that we didn't
25 discuss with each other.

1 Q. So you discussed that with Jack?

2 A. Yes.

3 Q. Did you share other intimate details about your personal
4 life with Jack Weichman?

5 A. Yes.

6 Q. Did you believe that those were private and personal to
7 the two of you?

8 A. Yes.

9 Q. What about -- did he know about your disabled son?

10 A. Yes.

11 Q. Did he know about your wife?

12 A. Yes.

13 Q. By the way, does your wife work outside the home?

14 A. Never.

15 Q. Never.

16 What about finances; did you ever confide in him your
17 fears about finances, your discomfort with dealing with money
18 and finances?

19 A. I did.

20 Q. And what did you share with Jack Weichman about your
21 feelings about money and finances?

22 A. Basically, I asked him to run my finances for me. I
23 didn't feel competent to do it.

24 Q. You didn't feel competent to do it?

25 A. Correct.

1 Q. Doctor, you are a highly educated professional, and are
2 you saying that you didn't feel comfortable handling your
3 money?

4 A. I did not feel comfortable handling my money, that's
5 correct.

6 Q. And did you communicate that fact to Jack Weichman?

7 A. Yes, I did.

8 Q. Now, you mentioned your brother, your brother was stealing
9 money from you. Did you ever file a lawsuit against your
10 brother?

11 A. No. It was more of a situation where he would ask for the
12 money, and I would give it to him rather than he would steal
13 it. But he would come into the house and help himself to
14 various objects in the house if he liked them.

15 Q. Like what?

16 A. Movies.

17 Q. How about jewelry?

18 A. Never knew him to take jewelry.

19 Q. Did he take anything else of value?

20 A. I -- I've lost track of that by now. I'm sorry.

21 Q. Would you describe yourself as financially illiterate?

22 A. Pretty much.

23 Q. Would you describe yourself as intimidated by money?

24 A. Yes.

25 Q. Do you know, Doctor, what your present net worth is?

1 A. No.

2 Q. Do you have any idea?

3 A. Approximately. I have an idea, rough idea.

4 Q. What is your rough idea of your current net worth, Doctor?

5 A. Well, I think in various bank accounts, I might have
6 upwards of \$600,000.

7 Q. Is that total?

8 A. I think so.

9 Q. Doctor, let me direct your attention to 1999. Did you
10 receive a \$5 million windfall that year?

11 A. We sold Comprehensive Renal Care. In 1989, we started to
12 plan our own dialysis units. In fact, Sister Jane Marie at
13 St. Margaret's had approached John Greenwalt because we had --
14 this was in 19 -- this was about 1987, '88. She approached him
15 and said: We would like to joint venture with you dialysis
16 units. So Jim got together with Mr. Pristave (phonetic), who
17 was a --

18 Q. Doctor, let me stop you. Let me try and expedite this.
19 Did you sell some part of your practice in 1999 to DaVita?

20 A. We sold all of our practice, our dialysis practice, that
21 is, to DaVita.

22 Q. And did the investors in that practice then get roughly
23 about \$5 million each?

24 A. I don't think it was quite that much, but it wasn't far
25 from that.

1 Q. Okay. Let's say not far from five. Were you one of the
2 investors in that practice that got that money?

3 A. I was.

4 Q. Was Jack Weichman one of the investors that got some
5 money?

6 A. Yes.

7 Q. Now, when you got that money, what was your feeling about
8 that, given what you have told us, that you feel intimidated by
9 finances? What was your feeling when you got \$5 million dumped
10 in your lap?

11 A. Didn't know quite what to do with it.

12 Q. Did you communicate that concern and fear to
13 Jack Weichman?

14 A. I asked Jack to handle the money for me because I didn't
15 know what to do with it.

16 Q. Why did you do that? Why did you ask Jack to do that?
17 Did you trust him?

18 A. I did. I thought the money should be invested. I didn't
19 know where to invest it.

20 Q. So you gave him no direction about where to invest money,
21 did you?

22 A. No, I did not.

23 Q. You relied entirely on the defendant to guide you?

24 A. I did.

25 Q. Did you understand that that money, that \$5 million, was

1 yours?

2 A. I think so.

3 Q. Do you doubt it, Doctor?

4 A. No.

5 Q. Did you ever communicate to Jack Weichman that, hey, that
6 \$5 million, take whatever you want? Did you ever tell him
7 that?

8 A. No.

9 Q. What did you count on that \$5 million for? What was that
10 going to do for you, Doctor?

11 A. Financial security for the future.

12 Q. Was it just your financial security, or did that include
13 your wife and child?

14 A. It would include my entire family.

15 Q. Who was instrumental in that DaVita buyout?

16 A. Mr. Weichman.

17 Q. Did you feel some gratitude for what he had done for you
18 in making you really wealthy?

19 A. Yes.

20 Q. How did you communicate that gratitude to Jack Weichman?

21 A. I said thank you.

22 Q. Was there anything else that you gave Jack Weichman?

23 A. Yes. I gave him \$250,000.

24 Q. Were you the -- you gave it to him?

25 A. I gave it to him.

1 Q. You didn't loan him \$250,000?

2 A. No, I gave it to him.

3 Q. This was a conscious decision on your part to give him
4 that money?

5 A. Yes.

6 Q. You wrote him a check?

7 A. I never wrote the check, no.

8 Q. Who wrote the check?

9 A. I don't know that checks were written. I think money was
10 transferred by Jack from one account to the other.

11 Q. But that was \$250,000 that you were aware of and you
12 consciously decided to give him?

13 A. That's correct.

14 Q. Do you recall him asking you to loan you any money in
15 2002?

16 A. No, I don't remember that.

17 Q. Were you aware in 2002 that Jack Weichman obtained a
18 \$250,000 line of credit in your name at Centier Bank for the
19 purpose of your investing in something called Broadmoor; are
20 you aware of that?

21 A. No.

22 Q. Did you have any investment -- did you have any money
23 invested, to your knowledge, in Broadmoor in 2002?

24 A. Not that I remember. Not that I know of.

25 Q. Well, would you remember that? \$250,000 is a lot of

1 money. Would you remember that?

2 A. I think so.

3 Q. Do you recall Jack Weichman ever saying to you, in 2002,
4 Hey, David, can I borrow your credit history, use your name and
5 go to Centier Bank and take a loan out, a credit line in your
6 name? Do you remember him ever saying that to you?

7 A. I don't remember that.

8 Q. Would you remember that?

9 A. I would think I would remember that.

10 Q. Is that something that you would have agreed to if he
11 asked for permission to do that?

12 A. I very well might have given him my permission had I
13 known, yes.

14 Q. You might have?

15 A. Yes.

16 Q. What would be a factor in your deciding whether or not to
17 loan Jack Weichman money?

18 A. Whether or not I could afford it.

19 Q. By the way, on Broadmoor, do you recall -- and I'm going
20 to refer to Ashbach 1. Do you recall being deposed in 2005
21 during the Lazzaro lawsuit?

22 A. I remember that I was deposed, yes.

23 Q. Taking a look at page 48 of that deposition, Ashbach 1.

24 MR. GURLAND: What exhibit number is this?

25 MS. BERKOWITZ: This is Ashbach 1, page 48.

1 Q. Do you remember being asked if you were becoming involved
2 in Broadmoor, and you said, "I was never offered. Basically, I
3 was told I couldn't afford it."

4 Question: "By Jack?"

5 And your replying, "Yeah."

6 So to the best of your knowledge, and this is in 2005, you
7 are completely unaware of having any involvement whatsoever in
8 Broadmoor, is that right?

9 A. That's right.

10 Q. And would it be fair to say you are completely unaware
11 that in 2002, Jack Weichman got a line of credit at Centier
12 Bank in your name with your credit for \$250,000, is that true?

13 A. That's true.

14 MS. BERKOWITZ: Still on Ashbach 1, if we can go to
15 page 11 of that deposition.

16 Q. In 2005 you were asked about your knowledge about finances
17 and specifics, and you specifically said, on line 11 of
18 page 11, "I have very little knowledge about the specifics of
19 my finances."

20 Question: "He handles it for you?"

21 "He handles it all."

22 Who is the he that's being referred to here on page 11?

23 A. Mr. Weichman.

24 Q. Now, Jack Weichman had a signature stamp, didn't he, your
25 signature stamp?

1 **A.** Yes, he did.

2 **Q.** So he could issue a check without you ever having to
3 actually physically sign it, right?

4 **A.** Yes.

5 **Q.** Did he ever tell you when he was using your signature
6 stamp?

7 **A.** At times I was aware he was using the signature stamp.

8 **Q.** Well, did he tell you specific instances where he used the
9 signature stamp, or did he just tell you generally, I'm using a
10 signature stamp?

11 **A.** I don't remember any specific instances at this point.

12 **MS. BERKOWITZ:** Let's take a look at 22 of Ashbach 1,
13 page 22.

14 **Q.** On page 22, are you indicating that Jack Weichman is
15 handling all your investments; you trusted him to handle your
16 investments?

17 **A.** I did, but I'm looking for it on the deposition.

18 **MS. BERKOWITZ:** Scroll up, please. I must have the
19 wrong page reference, so let me move on.

20 Let's take a look at page 23. If we can just move down on
21 page 23.

22 **A.** And the question?

23 **Q.** I'm going to get to that. Did you have any idea, in 2005,
24 as to the retirement accounts, what brokerage firm had them?

25 **A.** No, I didn't.

1 **MS. BERKOWITZ:** If we can go to page 53 of this
2 deposition, Ashbach No. 1, please. If we can scroll down on
3 page 53.

4 **Q.** Okay. You were asked, "Have you loaned money to Jack?"

5 Answer: "I may have. He, like I said, has access to my
6 funds."

7 Do you remember actually loaning money to Jack Weichman?

8 **A.** No. I have given him money, but I don't remember loaning
9 him money.

10 **Q.** Doctor, can you explain to us -- define loan. What is
11 that? What is a loan, as you understand it?

12 **A.** A loan is money that you give and expect returned.

13 **Q.** So any money that you have, let's say the \$850,000 in the
14 Centier Bank account, that credit line, did Jack Weichman, at
15 the time he took that money, did he ask your permission to take
16 it?

17 **A.** I don't remember him asking permission, no.

18 **Q.** You'd remember if he did, wouldn't you?

19 **A.** For that kind of money, I would think so.

20 **Q.** Well, it sounds -- Doctor, wouldn't it be a highly unusual
21 event for Jack Weichman to actually ask your permission to take
22 your money? Wouldn't it be?

23 **A.** Is that a question?

24 **Q.** It is a question. Wouldn't that be an unusual event, for
25 Jack Weichman to actually ask your permission to take your

1 money? Can you recall any instance where he asked permission?

2 A. I can't remember an instance where he actually asked me,
3 no.

4 Q. Did you ever give -- are you aware that in 2006
5 Jack Weichman increased -- or got a credit line at Centier Bank
6 for \$500,000 in your name and that the stated purpose of that
7 credit line was for you to buy stock? Were you aware, in 2006,
8 that Jack Weichman was doing that?

9 A. I don't remember that, no.

10 Q. Would you remember that?

11 A. I would think so.

12 Q. Are you aware that there were no stocks purchased for you
13 in 2006?

14 A. I was not aware of any stock being purchased in 2006, no.

15 Q. Let alone \$500,000 worth of stock?

16 A. No.

17 Q. Did Jack Weichman come to you in 2006 and say, David, can
18 I appropriate your name, your credit history and your assets so
19 I can get a line of credit in your name?

20 A. No, I don't remember that.

21 Q. In 2007 were you made aware by Jack Weichman that he was
22 seeking to increase that \$500,000 credit line held in your name
23 at Centier Bank to \$850,000?

24 A. I don't remember that either.

25 Q. So you're not aware that in 2007 Jack Weichman is telling

1 Centier Bank that you want to invest -- in 2007 you want to
2 invest in Jalapenos -- I'm sorry, to fund the move of
3 Woodhollow to Jalapenos?

4 **A.** I was aware that it happened. I wasn't aware that I had
5 any involvement in it.

6 **Q.** You were aware that Jack Weichman was doing that?

7 **A.** Yes.

8 **Q.** But you had no idea that there was this line of credit,
9 now up to \$850,000, in your name with your credit history and
10 your assets guaranteeing it; you weren't aware of that in 2007?

11 **A.** No.

12 **MS. BERKOWITZ:** Let's take a look at Ashbach 2,
13 please.

14 **Q.** Looking at page 101.

15 **MS. BERKOWITZ:** If we could scroll down a little bit,
16 please.

17 Also 102. It is on 102.

18 I guess we have to go to 101 again a little bit. Okay.

19 I'm sorry. Scroll down, please. Down to 102.

20 **Q.** You are being asked questions about Jack Weichman's
21 handling of your personal finances. Do you see that on 101 to
22 102?

23 And you are asked, "Have you ever guaranteed loans on
24 Mr. Weichman's behalf with a lender?"

25 And you respond, "I believe the correct answer would be

1 yes."

2 Doctor, that's very cryptic. What do you mean by that?

3 A. I became aware of the \$850,000 in loans when the loan had
4 to be renewed. At that point, I had to sign the renewal
5 papers.

6 Q. You had to?

7 A. It was either that or I would lose the stock -- my stock
8 that had been used as collateral for that loan.

9 Q. Well, let's just talk about what's going on here. Is it
10 your testimony that what you are being told is that there's a
11 loan? But do you believe there to be a loan? Did you loan
12 money to Jack Weichman? Did you make a conscious decision?

13 A. I borrowed money for Jack Weichman's use.

14 Q. Did you make a conscious decision to take out those lines
15 of credit at Centier Bank in 2006 and 2007; was that your
16 decision to do that?

17 A. I don't remember doing that, no.

18 Q. So, no, that wasn't your conscious decision?

19 A. I don't remember doing that. I don't think I did that.

20 Q. Okay. That's a lot of money, by your account, is that
21 correct?

22 A. Yes, it is.

23 Q. And do you believe if you would have actually made a loan
24 to the defendant and said, Oh, sure, take my credit, take my
25 assets, that you would have remembered that?

1 A. I would have, yes.

2 Q. Has there been anything that's happened to your memory up
3 through 2014 that would in any way impact your ability to
4 recall an event so significant?

5 A. Well, I did have chemotherapy in 2012.

6 Q. Did you suffer any consequence from the chemotherapy?

7 A. I am not aware that I have a memory problem.

8 Q. Were you still practicing as a physician through the time
9 you were getting chemo?

10 A. Yes.

11 Q. Prescribing for patients?

12 A. Yes.

13 Q. You were operating a car?

14 A. Yes.

15 Q. You were functioning in society?

16 A. I was.

17 Q. Any patients -- did you have any problem with any of your
18 patients? Did you misdiagnose a patient or issue the wrong
19 dosage unit for a patient that you can recall during the time
20 you were having chemo?

21 A. Not that I'm aware of.

22 Q. So can we say that based on your experience it doesn't
23 seem that the chemo had an effect on your memory and recall,
24 did it?

25 A. I'd like to think that it didn't.

1 Q. Do you know of any?

2 A. No.

3 Q. So it's the defendant who's telling you that you
4 authorized these loans, as you characterize it, on page 102 of
5 Ashbach No. 2, this deposition in 2014?

6 A. That's correct.

7 Q. And by the way, who is the attorney who is present with
8 you for that deposition? Is that Scott Yahne?

9 A. Yes.

10 Q. Who hired Scott Yahne for you in this deposition?

11 A. Mr. Weichman.

12 Q. What is the subject matter that's being addressed in this
13 lawsuit?

14 MS. BERKOWITZ: If we could maybe go back to Ashbach
15 1, the first couple pages.

16 A. Nephrology Specialists. At this point, I was president of
17 Nephrology Specialists, and Jack was our practice manager. And
18 certain members of Nephrology Specialists broke -- caused the
19 group to split. And after the group had split, Nephrology
20 Specialists then sued Mr. Weichman and myself for
21 misappropriation of funds.

22 Q. Misappropriation of funds. What was the allegation? That
23 there's money missing from the business, is that right?

24 A. That's correct.

25 Q. You were personally sued, is that right?

1 A. Yes, I was.

2 Q. That means your assets could be potentially on the line in
3 that lawsuit, is that right?

4 A. They are, yes.

5 Q. Did anyone discuss with you, Dr. Ashbach, the possibility
6 of a counterclaim against Jack Weichman?

7 A. On my part?

8 Q. Right, on your part.

9 A. It has been mentioned on multiple occasions, yes.

10 Q. Was that discussed with you with the lawyer that's
11 representing you?

12 A. Yes.

13 Q. And you took no action?

14 A. I took no action.

15 MS. BERKOWITZ: Let's go to page 104 of this
16 deposition.

17 If you could scroll down a little bit on page 104.

18 Okay. I'm sorry. Can I also look at 103, please. 103.

19 Okay. Let's stop here.

20 Q. On page 103, they are asking about these loans. It says,
21 "How many loans have been secured in your name without your
22 knowledge for Mr. Weichman's use of the funds?" That's the
23 question posed to you, is that right?

24 A. That's right.

25 Q. And your response to that question of how many loans

1 without your knowledge are two, correct?

2 A. Correct.

3 Q. And they're both in the amount of \$500,000 each, yes?

4 A. That's what I thought at that time, yes.

5 Q. And you're asked, "Have you talked to Mr. Weichman about
6 that?"

7 MS. BERKOWITZ: If we could scroll down, please.

8 Q. And you're asked, "What did he say?"

9 And he said, "He needed the money for his business."

10 And his response is, "Which business?" They're asking,
11 "Which business?"

12 And you reply, "He didn't specify."

13 So, Dr. Ashbach, in 2014, you have no idea what that money
14 that that line of credit, those lines of credit at Centier
15 Bank, is for, do you?

16 A. At that point, no.

17 Q. No one came to you and said, Oh, this is for Jalapenos,
18 did they?

19 A. No.

20 Q. No one gave you any kind of contract or agreement that
21 said, Oh, here is an agreement, David, and you are all settled
22 and taken care of. You loaned us money for Jalapenos. You
23 didn't get that in 2014?

24 A. No.

25 Q. Does Scott Yahne also represent Jack Weichman in matters

1 related to Jalapenos; do you know?

2 A. I don't know.

3 MS. BERKOWITZ: Let's take a look at page 106 of
4 Ashbach No. 2, please.

5 Q. So you're also asked on these loans, "Has Jack Weichman
6 signed any guarantee of either of these two \$500,000 loans?"

7 "No. He has no obligation on the loans whatsoever."

8 Doctor, were you okay with that?

9 A. I didn't feel I had much choice but to be okay with it.

10 Q. Why?

11 A. Because the loans were in my name, and I was responsible
12 for them.

13 Q. Well, did you talk to a lawyer? Because you are telling
14 us you didn't give him permission, you didn't know about them.
15 Did you go to a lawyer and say, Help me; Help me; Get me out of
16 this?

17 A. No, I did not.

18 Q. Why?

19 A. I didn't think there was anything a lawyer could do to
20 help me get out of it. I apparently signed for those loans,
21 and --

22 Q. Well, let's talk about that, signing for those loans.
23 Doctor, do you read what you sign?

24 A. Of the various bank papers, all of which are at least
25 12 inches long, very small print for pages and pages of

1 language that I really don't understand, no, I didn't read
2 them.

3 Q. Wasn't that common knowledge at Weichman and Associates,
4 and for the defendant, that you didn't read anything that was
5 put in front of you; isn't that true?

6 A. Basically, yes.

7 Q. So you're saying that you felt just because your signature
8 was on here, something that you didn't read and didn't
9 understand, that you were stuck?

10 A. That's what I thought, yes.

11 Q. Did you have trouble getting explanations, when you had
12 questions, from Jack Weichman about your finances?

13 A. It is a difficult question to answer because we talked a
14 lot about a lot of things, but we didn't talk a lot about my
15 finances, and I didn't ask a lot about my finances.

16 Q. Why didn't you ask about your finances, Doctor?

17 A. I trusted that they were secure and that they were being
18 taken care of. And as we've already said, I did not feel
19 comfortable talking about them.

20 MS. BERKOWITZ: Your Honor, should we take a break?

21 THE COURT: No, I just wanted to see if the next
22 parties were out in the hallway. You can continue until they
23 are here.

24 MS. BERKOWITZ: Okay.

25 Q. Let me direct your attention to September of 2013. Do you

1 recall being contacted by Centier Bank regarding \$350,000 in
2 checks to a casino or withdrawals from a casino coming through
3 a Centier Bank account held in your name?

4 **A.** Yes.

5 **Q.** Is that memorable?

6 **A.** Very.

7 **Q.** Why?

8 **A.** Because there was only \$10,000 in the account, and they
9 paid one of those \$10,000 checks and sent the others back to
10 the casino.

11 **Q.** It overdrafted your account, didn't it, or the account
12 that's held in your name? Were you aware of that?

13 **A.** The account was in my name, it was my account, and there
14 was not sufficient funds for those checks, so they were
15 returned.

16 **Q.** Did someone from the bank call you and say, there's a
17 problem here?

18 **A.** Yes.

19 **Q.** Was that the first time that you were aware that
20 Jack Weichman was using that account that had your name on it
21 to run gambling debt and gambling checks and money from
22 Brenda Eriksen through?

23 **A.** I didn't know anything about Brenda Eriksen at that point.
24 However, that's the first I was aware that there was an issue
25 involving gambling.

1 Q. What did you do when you found out Jack Weichman was
2 issuing checks totaling \$350,000 on your -- on an account in
3 your name to casinos?

4 A. I did ask him about it. He said they were markers that
5 the bank was simply supposed -- I mean, the casinos was simply
6 supposed to hold those checks until he could make them good.
7 They were not supposed to be sent to my bank. He referred to
8 them as markers.

9 Q. Was Jack Weichman -- was he a signatory on that account;
10 do you know?

11 A. I wouldn't be a bit surprised, but I think he basically
12 used my -- no, I think he was a signatory on that account
13 because I think some of those checks had his signature on them.
14 But to be honest with you, I can't remember whether those
15 checks were stamp signed by my stamp or whether they had his
16 signature. No, I do remember because it was really kind of
17 interesting because the checks had my name on them and they had
18 Jack's name on them, and my name was this big (indicating), and
19 his name was this big (indicating) on those checks.

20 Q. So you're showing a difference between maybe a quarter of
21 an inch?

22 A. And maybe half an inch, yeah.

23 Q. Did you tell the bank anything when you found out that all
24 this money for casinos was going through your account? What
25 did you do with the bank?

1 A. I think we closed the account then and there.

2 Q. Let me direct your attention to May of 2014.

3 That credit line -- you subsequently found out about the
4 credit lines at Centier Bank, did you not, after they had
5 already been taken out, after the money was already exhausted?

6 A. You are talking about the 850,000?

7 Q. Right.

8 A. I knew about that account when the first renewal came up,
9 at least I think it was the first renewal.

10 Q. So it was after the money had already been exhausted, is
11 that correct?

12 A. Yes.

13 Q. The line had been exhausted.

14 And, again, you chose not to do anything because you
15 thought you couldn't do anything?

16 A. One, I didn't think I could do anything, and, two, I still
17 trusted Jack at that point.

18 Q. You trusted him?

19 A. Yes.

20 Q. Why, knowing that he had basically appropriated your
21 identity to take out a credit line in your name for something
22 for him?

23 A. True. But the trust pretty much ended when that 350,000,
24 \$360,000 worth of casino checks came through.

25 Q. Why?

1 **A.** That's about the point -- because I have a very negative
2 feeling about gambling, casino gambling in particular.

3 **THE COURT:** How much longer are you going to have on
4 direct, Ms. Berkowitz?

5 **MS. BERKOWITZ:** A while.

6 **THE COURT:** I'm going to interrupt you at this point
7 because I don't want to keep these parties waiting any longer.
8 So if you guys don't mind maybe just pushing all your stuff to
9 one side of the table, and this sentencing shouldn't take any
10 more than 20 minutes. So just stand by, and I'll be back with
11 you. I'm going to have to interrupt the testimony, and we'll
12 pick back up in a few minutes.

13 **THE WITNESS:** Do you want me to get down?

14 **THE COURT:** Yeah, I need you to get down.

15 **THE WITNESS:** Okay. All right.

16 (A recess was had at 2:13 p.m.)

17 (The following proceedings were held in open court
18 beginning at 2:43 p.m., reported as follows:)

19 **DEPUTY CLERK:** All rise.

20 **THE COURT:** Okay. You can be seated, sir. We're
21 back on the record in United States versus Jack Weichman,
22 2:14-CR-93. We are continuing with the direct examination of
23 Dr. Ashbach.

24 Ms. Berkowitz.

25 **DIRECT EXAMINATION (Continued)**

1 BY MS. BERKOWITZ:

2 Q. Dr. Ashbach, when we left off, we were talking about the
3 deposition you gave in March of 2014, correct?

4 A. Correct.

5 Q. In March of 2014, you aren't aware, were you, that you had
6 retirement fund accounts at LPL and Stifel Nicolaus, were you,
7 in March of 2014?

8 A. I didn't know the names of the companies. I knew that I
9 did have accounts.

10 Q. You knew you had retirement accounts?

11 A. Yes.

12 Q. But you had no idea where they were?

13 A. No.

14 Q. In fact, you testified in a deposition in 2005 that you
15 didn't know where your retirement accounts were, didn't you?

16 A. Correct.

17 Q. Does that change, though, in 2014, when you are visited by
18 Special Agent Brian Visalli?

19 A. I don't remember when I learned where the companies were,
20 but I learned a lot from Brian that day, yes.

21 Q. Well, when you were being deposed back in March of 2014,
22 you had no idea that Jack Weichman had, in fact, stolen money
23 from you, that he had taken millions of dollars from you; you
24 didn't know that in March of 2014, did you?

25 A. No.

1 Q. So was that information that you got when Brian Visalli
2 came to visit you, that, in fact, you had millions of dollars
3 stolen from you by Jack Weichman?

4 A. That was brand new knowledge for me, yes.

5 Q. So you didn't know where your retirement fund accounts
6 were, and you didn't know that the defendant had been helping
7 himself to those retirement fund accounts, did you?

8 A. No.

9 Q. Doctor, previously we talked about -- you had said that
10 you would sign stuff without reading it.

11 I'm going to show you what's been marked as Search Warrant
12 Exhibit 70.

13 MS. BERKOWITZ: If we could switch from computer to
14 the ELMO, please. I'm sorry.

15 Q. Do you recognize this document that I'm showing you? Do
16 you know what this is?

17 A. I recognize my signature. The rest of it is kind of
18 blurry.

19 Q. This is for an LPL account, and it is basically like a
20 withdrawal slip, isn't it?

21 A. Yes.

22 Q. And it is blank?

23 A. Yes.

24 Q. Completely blank but for one thing.

25 A. Has my signature.

1 Q. Right. Doctor, this is the kind of stuff that you would
2 just sign, you wouldn't read? Did you read what you were
3 signing?

4 A. I knew that I was signing several blank forms for the
5 brokerage account so that Jack could get money to pay off some
6 of my debts.

7 Q. Your debts?

8 A. Yes.

9 Q. Not his debts?

10 A. Correct.

11 Q. Did you always know what Jack was doing with those --
12 well, you didn't know what Jack was doing with those brokerage
13 accounts, did you?

14 A. Not generally, no.

15 Q. I'm going to show you what's been marked as Search Warrant
16 71.

17 Do you see this document? Have you seen this before?

18 THE COURT: Will you remove that Post-It note?

19 MS. BERKOWITZ: This is part of a document.

20 THE COURT: It is part of the original?

21 MS. BERKOWITZ: It is part of a document, Your Honor.

22 THE COURT: I thought it was a note to yourself.

23 MS. BERKOWITZ: No.

24 Q. Dr. Ashbach, have you seen this document before?

25 A. (No response.)

1 Q. As you are looking at that document, on the computer it
2 looks like it is one intact document, doesn't it?

3 A. Yes.

4 Q. Guess what, it is Scotch-taped, Doctor. That's blank.
5 Scotch-taped over that page, over that letter, is a cutout of
6 your signature. Were you aware that Jack Weichman was doing
7 that kind of stuff?

8 A. No.

9 Q. So you said you were signing a lot of documents. Were you
10 signing documents for your medical practice that you were in at
11 the time?

12 A. Usually, yes.

13 Q. Was that Nephrology Specialists?

14 A. It was Nephrology Specialists up to 2012. After that, I
15 was no longer responsible for the corporation I was a member
16 of.

17 Q. For Nephrology Specialists -- were you the president of
18 Nephrology Specialists?

19 A. I was president of Nephrology Specialists until I
20 resigned.

21 Q. Who made you president of Nephrology Specialists?

22 A. I was told when we first incorporated that, according to
23 Indiana law, the corporation had to have a president, and
24 therefore -- there were three of us. There was Dr. Floyd,
25 myself and Dr. Greenwalt, and Jack said, you will be president.

1 Q. Jack said to you --

2 A. Yes.

3 Q. -- you will be president?

4 A. Yes.

5 Q. Would it be fair to say that you were probably the least
6 qualified to be president, Dr. Ashbach?

7 A. No, probably Dr. Floyd was least qualified.

8 Q. Okay.

9 A. But certainly --

10 Q. Fair enough.

11 A. But certainly Dr. Greenwalt was far more knowledgeable
12 about finances than I was.

13 Q. And as you have said, you were not at all knowledgeable
14 about finances?

15 A. That's correct.

16 Q. Would it also be fair to say that you pretty much gave
17 Jack Weichman free rein; you didn't pay attention to what was
18 going on with the practice?

19 A. That's correct. I was basically taking care of my
20 patients.

21 Q. And were there loans that Nephrology Specialists -- your
22 practice had with banks?

23 A. Yes.

24 Q. So if you saw any loan documentation, did you assume it
25 was for your practice?

1 A. That's correct.

2 Q. You didn't look at it carefully, did you?

3 A. No.

4 Q. And you did that because you trusted the defendant?

5 A. I did.

6 Q. Where would you come and sign these documents? Was it --
7 were the papers brought to your office, or did you have to go
8 to Jack Weichman's office?

9 A. I went to Mr. Weichman's office.

10 Q. Does Jack Weichman currently have any signatory authority
11 over your bank accounts?

12 A. No.

13 Q. Why not?

14 A. Because I stopped trusting him, and he didn't -- one, he
15 didn't ask for it. I wouldn't have given it to him. And at
16 this point, I would not trust him to do that.

17 Q. Now, you mentioned that you were terminated from your
18 practice, is that right?

19 A. Technically, I resigned, but they were about to vote me
20 out.

21 Q. They were going to vote you out. Now, as a result of your
22 leaving that practice, were there some outstanding benefits or
23 assets that had to be divvied up amongst the partners?

24 A. (No response.)

25 Q. Was there something called Jayvac (phonetic)?

1 A. JV?

2 Q. JV. What's JV?

3 A. Joint venture.

4 Q. Joint venture. Is that some sort of a partnership?

5 A. It is.

6 Q. And did the partners offer you money for your share in
7 that partnership?

8 A. Not yet.

9 Q. Did they at some point offer you -- they didn't offer you
10 any money?

11 A. They did initially.

12 Q. Okay. What did they offer you initially?

13 A. They offered to wipe out my debt to Northwest Indiana
14 Nephrology in exchange for my share of the joint venture.

15 Q. How much was that really?

16 A. Probably, truthfully, about 53,000, but they represented
17 it as about 200,000.

18 Q. Okay. Now, Jack Weichman was still functioning as the
19 manager of that practice, wasn't he, when this was all
20 happening?

21 A. Not at that point, no.

22 Q. No? By the way, when is this happening? What's the date
23 we are talking about?

24 A. This was May of 2017, and I think Jack was terminated -- I
25 believe Jack was terminated as manager of that practice in

1 January of 2017.

2 Q. Now, when you are faced with this -- did you believe that
3 the partnership had greater value than what the partners were
4 representing to you?

5 A. I had no idea.

6 Q. Okay. And who did you turn to?

7 A. I turned to Jack.

8 Q. Why did you turn to Jack?

9 A. Beg your pardon?

10 Q. Why did you turn to Jack?

11 A. Because Jack told me that my value was considerably more
12 than they were offering me.

13 Q. Okay. So how did it come that Jack tells you, hey, this
14 is worth more than they are offering? He knew about this and
15 he approached you?

16 A. I don't remember, to be honest.

17 Q. But Jack is telling you, this is worth a lot of money?

18 A. Yes.

19 Q. And this is after he's been indicted and you're aware that
20 he's taken all this money from you?

21 A. Correct.

22 Q. And you still seek his guidance?

23 A. I did, yes.

24 Q. Why?

25 A. I had nowhere else to turn, as far as being able to

1 continue to practice, how I was going to continue to practice;
2 or in an actual fact, he's the only one who understood the
3 books well enough to know when I was being cheated by Northwest
4 Indiana Nephrology.

5 Q. So did Jack Weichman conduct an evaluation for you on the
6 value of the partnership?

7 A. Yes, he did.

8 Q. He personally conducted that evaluation?

9 A. No, he hired a company, Healthcare Associates, to evaluate
10 my share of the corporation -- or to evaluate the value of the
11 entire corporation and then my share.

12 Q. And was that valuation greater than what your partners
13 were offering you?

14 A. Considerably.

15 Q. Do you feel beholden to Jack Weichman for doing that?

16 A. Yes, I do.

17 Q. So do you still meet with Jack Weichman about the
18 operation of your current medical practice?

19 A. He manages my current medical practice, and I still meet
20 with him regularly about it.

21 Q. Do you still have a personal relationship with him? Do
22 you consider yourself good friends still, like brothers?

23 A. Yes.

24 Q. Now, do you meet with him at his office?

25 A. Yes.

1 Q. And, in fact, did you meet with him at his office on
2 April 16th of 2018?

3 A. I -- I don't -- I mean, I meet with him several times a
4 week. I would not remember exactly what days.

5 Q. Let me show you what's been marked as Defense Exhibit 16.
6 Do you recognize this document, Dr. Ashbach?

7 A. Yes, I do.

8 Q. Okay. It is dated April 16, 2018. Was that the date you
9 wrote the document?

10 A. I think I probably hand wrote it the day before.

11 Q. Oh, you hand wrote it or you did it on your laptop?

12 A. I hand wrote it.

13 Q. Okay. And where were you when you hand wrote that?

14 A. I was in his office.

15 Q. And who was present in his office when you hand wrote
16 that?

17 A. He was.

18 Q. Was there anyone else in the office?

19 A. No, it was late at night.

20 Q. And --

21 A. Or perhaps early morning.

22 Q. Who asked you to write this letter?

23 A. Jack had asked me to write the letter.

24 Q. Did you feel, Dr. Ashbach, that you could refuse to write
25 that letter?

1 **A.** Yeah, I did feel I could refuse to write the letter.

2 **Q.** You felt you could refuse?

3 **A.** (No response.)

4 **Q.** You didn't feel beholden to Jack Weichman if you didn't
5 write the letter?

6 **A.** I felt beholden to him, but I didn't think what he asked
7 me to write was incorrect or unreasonable.

8 **Q.** As far as his mother goes?

9 **A.** Yes.

10 **Q.** Now, there are two lines that appear at the end of this
11 document. It says --

12 **THE COURT:** Can I clarify something? I want to make
13 sure --

14 **MS. BERKOWITZ:** Sure.

15 **THE COURT:** Did you just ask -- did he ask you to put
16 in the letter the reference to the situation with his mother?

17 **THE WITNESS:** He was discussing his mother's
18 situation with me.

19 **THE COURT:** Okay.

20 **THE WITNESS:** And I think it was kind of mutually
21 decided that it would be okay for me to write this letter.

22 **THE COURT:** Fair enough.

23 **BY MS. BERKOWITZ:**

24 **Q.** Now, taking a look at the last two sentences of his
25 letter, it says, "I am convinced that without him, she would

1 die. Please seriously consider not taking Jack away from his
2 mother or any of us." I guess it is three sentences. "We all
3 want and need him."

4 **A.** I wrote that.

5 **Q.** You wrote that?

6 **A.** Jack did not write that.

7 **Q.** Dr. Ashbach, do you recall being interviewed at the U.S.
8 Attorney's Office in the presence of Brian Visalli and stating
9 that, in fact, those two lines were dictated to you by
10 Jack Weichman?

11 **A.** No, what I said was that there were some elements in the
12 letter that Jack had put in there, but it wasn't those last two
13 sentences.

14 **Q.** So is it your testimony here today that those last two
15 lines were not, in fact, dictated by Jack Weichman?

16 **A.** No, they weren't.

17 **MR. GURLAND:** Your Honor, if I may, I have asked the
18 government, specifically in our e-mails, for any additional
19 302s or MOIs. It was my understanding, in fact, that they had
20 met with Dr. Ashbach after we obtained the settlement
21 agreement, and I was specifically told that there were no more
22 interview memos, MOIs. I'd asked that the agent bring his
23 notes here today. I was told by Diane Berkowitz in an e-mail,
24 because she wasn't talking to me, that there was nothing
25 exculpatory, nothing existing, nothing we needed to know. This

1 should have been disclosed. Maybe there's something they could
2 provide us.

3 **THE COURT:** Ms. Berkowitz, was there an MOI or 302
4 written as it relates to this meeting?

5 **MS. BERKOWITZ:** No, Your Honor. This is preparation
6 for sentencing. The agent may have dashed three sentences,
7 but, in fact, the statement that was made by Dr. Ashbach at the
8 time was inculpatory, not exculpatory. The statement was that
9 these two lines were written by Jack Weichman.

10 **THE COURT:** I understand that. I'm just trying to
11 inquire as to whether or not it was recorded in some kind of
12 memorandum or 302 or what have you.

13 **MS. BERKOWITZ:** Your Honor --

14 **AGENT VISALLI:** It wasn't.

15 **MS. BERKOWITZ:** No. No. It is not exculpatory,
16 again, Your Honor.

17 **THE COURT:** No, I fully understand that.

18 **BY MS. BERKOWITZ:**

19 **Q.** Dr. Ashbach, when was the last time you met with
20 Jack Weichman?

21 **A.** Yesterday.

22 **Q.** You entered recently into an agreement that's titled
23 "Agreement," Defendant's Exhibit 15. Are you familiar with
24 this document?

25 **A.** Yes, I am.

1 Q. Okay. And who drafted this document?

2 A. It was drafted by my lawyers.

3 Q. By your lawyers. Do you recall telling us that it was
4 drafted by Michael Gurland?

5 A. Mr. Gurland was involved with the drafting of this, yes.

6 Q. Now, what is your understanding, Dr. Ashbach, as to what
7 Defendant's Exhibit 15 does?

8 A. Basically, it is part of the agreement for Jack to attempt
9 to make some restitution by giving to me part of Jalapenos.

10 Q. Okay. And, in fact, what's identified here is that on
11 page -- I guess paragraphs 2 and 3 -- he's giving you a 20 --
12 he owns 50 percent of these two entities, Woodhalapenos and JAW
13 Ventures II, correct?

14 A. Correct.

15 Q. Or that's what he's representing. He's agreeing to give
16 you 25 percent of his 50 percent interest?

17 A. He's agreed to give me half of his 50 percent interest so
18 that I would have 25 percent of the entire entity, or
19 one-fourth.

20 Q. So would you agree with me, Doctor, that half of
21 50 percent is 25 percent?

22 A. Of the whole thing, but not 25 percent of his 50 percent.

23 Q. Not following you, Doctor.

24 A. The way you phrased it, it would have been 12-and-a-half
25 percent.

1 Q. Okay. He's got 50-percent ownership interest, and his son
2 has the other 50-percent ownership interest in these entities,
3 is that correct?

4 A. That's my understanding.

5 Q. So of that 50-percent interest that the defendant has,
6 he's offering you half, right?

7 A. Correct.

8 Q. Now, are you aware that but for this agreement you would
9 be able to go after a hundred percent of his ownership
10 interest, but you have limited yourself to 25 percent; do you
11 realize that?

12 A. I do realize that.

13 Q. Do you realize that the document has no specified
14 repayment plan?

15 A. There is -- there is the 850,000.

16 Q. Where would that be, Doctor?

17 A. That's not in this document.

18 Q. It is not in the document. Where would that be, then,
19 Doctor?

20 A. I don't know.

21 Q. You don't know.

22 It says that you will receive money -- you will get a
23 \$4,000-a-month consulting fee after the Woodhalapenos loan is
24 paid off, a \$4,000-a-month consulting fee. What consulting
25 will you be doing, Doctor?

1 **A.** I can't answer that question. I don't know the answer.

2 **Q.** Doctor, is this -- does this seem like it might be a sham
3 agreement? If you are not doing consulting work, then why
4 would you be paid a consulting fee? Is that a sham on the IRS,
5 because the defendant could then deduct consulting fees that he
6 pays?

7 **A.** I don't know the answer to that.

8 **Q.** By the way, that ownership interest in Woodhalapenos and
9 JAW Venture, do you know how much either of those entities are
10 worth?

11 **A.** I do not.

12 **Q.** Do you know if either of those entities has any debt?

13 **A.** I know that they have that 850,000, of which it is now
14 about 500,000.

15 **Q.** I don't understand, Doctor. Can you explain that to me?
16 What are you talking about?

17 **A.** There are two loans. I think that there is one for about
18 120,000 that they owe me, and then there is the money that I
19 borrowed on behalf of Jalapenos that they are paying back.
20 That's being secured by my brokerage account.

21 **Q.** Okay. We'll get to that. But just taking a look at this
22 loan -- or this agreement, there's no -- you don't know if
23 either of those two entities has any value at all, do you, as
24 you sit here today?

25 **A.** My lawyers have told me that there is considerable value

1 in those entities, but I don't know.

2 Q. Have you seen any tax returns?

3 A. No, I have not.

4 Q. Have you seen any bank statements?

5 A. I have not.

6 Q. Are you aware that in the bankruptcy proceeding
7 jack Weichman identified both of those entities as not
8 generating any income to him?

9 A. I'm not aware of that.

10 Q. Doctor, can you tell us where in this agreement is any
11 protection for your wife and family members, including your
12 disabled son?

13 A. I -- I can't answer that either.

14 Q. In the event of your death, what do you understand is
15 going to happen with this agreement?

16 A. I think that the 25 percent becomes part of my estate.

17 Q. You think or you know, Doctor?

18 A. I think. I don't know.

19 Q. And again, you don't know if that 25 percent of either of
20 those entities has any value whatsoever?

21 A. That's correct.

22 Q. Doctor, your wife is 74?

23 A. Yes.

24 Q. It says here that "Upon David's demise" -- David, I take
25 it that is you. There are no last names used in this

1 agreement. Is that you?

2 A. That's me.

3 Q. -- "Jack, his estate, or his son Ari shall have the right
4 to buy back shares in both entities for net fair market value
5 at that time." What's net fair market value?

6 A. I don't know.

7 Q. In fact, net fair market value will be agreed upon by the
8 parties. That would be your wife. Is your wife someone who is
9 going to pursue this kind of an agreement?

10 A. Probably not.

11 Q. Would your wife go get an independent appraisal of these
12 businesses?

13 A. She would need the advice of a lawyer to know to do that.

14 Q. Well, did you get an independent appraisal of either of
15 those businesses?

16 A. No, I did not.

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1 Q. I just want to clarify something here on paragraph 4: "It
2 is acknowledged that Woodhalapenos owes a loan in the amount of
3 \$466,205.47 that was taken out with David Ashbach's consent and
4 knowledge and guaranteed by David from Centier Bank and
5 subsequently refinanced to First Financial."

6 Doctor, did you not testify earlier that you were unaware
7 of any of those loans, the 2006, 2007 Centier loans being taken
8 out?

9 A. I was aware once the loans were renewed.

10 Q. Once they were renewed?

11 A. So at the point of the preparation of this document, I was
12 aware of those loans.

13 Q. So to be clear, at the time those loans were taken out,
14 you were not aware of them?

15 A. That's correct.

16 Q. And the loan that's being referred to, that's the loan
17 that was transferred to First Financial, correct?

18 A. Correct.

19 Q. In fact, two loans. Those loans were transferred from
20 Centier Bank to First Financial?

21 A. Yes.

22 MS. BERKOWITZ: Can we pull up First Financial 1 and
23 2.

24 Q. I'm showing you now one of the loans from First Financial.
25 This is the loan that was transferred from Centier Bank to

1 First Financial, is that right?

2 A. (No response.)

3 Q. Do you want to scroll down and take a look at that? Do
4 you see your -- you signed that?

5 A. I did.

6 Q. And you knew it was being transferred to Centier Bank?

7 A. I did.

8 Q. And did you feel at the time you were transferring this
9 that this was something that you had a choice about, or did you
10 fear you were going to lose your DaVita stock that was
11 guaranteeing the Centier loan?

12 A. No, I didn't feel I was going to lose the stock. My
13 understanding was that the transfer was made because the
14 interest rate was better.

15 Q. So you have not previously testified, Doctor, that you
16 believed that if you didn't make the transfer that you would --
17 if Jack Weichman defaulted, you could -- Centier Bank would
18 just take your DaVita stock?

19 A. That's correct.

20 Q. Now, do you recall testifying earlier today that you
21 didn't think you had a choice and you didn't consult a lawyer?
22 You don't recall that?

23 A. I do, but that was for the renewal, not the transfer.

24 MS. BERKOWITZ: Could we go back to the ELMO, please.

25 Q. Taking a look at the first page of Defendant's Exhibit 15.

1 [As read:] "Whereas during the course of their
2 long-standing relationship, David expressed to Jack on many
3 occasions Jack would use David's assets and guarantees for
4 Jack's personal use, with David's prior knowledge."

5 **A.** Is that the final document?

6 **Q.** This is Defense Exhibit 16. Would you look to see your
7 signature?

8 **A.** I thought that part had been removed.

9 **Q.** Why? You want that removed? Why do you want that
10 removed, Doctor?

11 **A.** Because I did not specifically tell Jack at any point that
12 he could take my funds for his personal use.

13 **Q.** So do you agree, Doctor, that the money that came out --
14 the \$850,000 at Centier Bank that was taken out in 2006 and
15 2007, that resulted in an \$850,000 line of credit being
16 exhausted in your name, that was not something that you agreed
17 to?

18 **A.** That's correct.

19 **Q.** That was not a loan, is that correct?

20 **A.** That's correct.

21 **MS. BERKOWITZ:** If I could have a moment.

22 **THE COURT:** (No response.)

23 **MS. BERKOWITZ:** I have no further questions right
24 now, Your Honor.

25 **THE COURT:** Cross, Mr. Gurland?

1 **MR. GURLAND:** Yes, Your Honor.

2 Your Honor, do you have a copy of the exhibit binder?

3 **THE COURT:** I do.

4 **MR. GURLAND:** I may do a lot of this the old fashion
5 way.

6 May I approach the witness?

7 **THE COURT:** Sure.

8 **CROSS-EXAMINATION**

9 **BY MR. GURLAND:**

10 **Q.** Mr. Ashbach, when I'm ready to go to the exhibits, I'll
11 direct you to each numbered exhibit.

12 **A.** Okay.

13 **Q.** I just want to start first where we just left off with
14 regard to that paragraph in the signed settlement agreement.
15 Do you recall that in the meeting in which your lawyer,
16 Art Hyman was there, and Mr. Efron was there, I believe
17 Mr. Driscoll was there as well, Mr. Pinkerton was there,
18 Jack Weichman was there, and I was there, that when that
19 sentence was written, you approved it because we added the
20 words "prior knowledge" to it? Does that ring a bell, you said
21 "with my prior knowledge"?

22 **A.** Ah, that's right. You are correct.

23 **Q.** In fact, there were a number of whereas clauses that you
24 struck from that agreement and you refused to sign, correct?

25 **A.** Correct.

1 Q. And it is true that I was involved in drafting that
2 agreement, but that agreement originally was drafted about a
3 year ago by Jack's former counsel, who is now Ms. Berkowitz's
4 boss, right, by Mr. Kirsch?

5 A. I understand, yes.

6 Q. And it took about a year, because of the change of
7 counsel, for that settlement agreement to, in fact, get signed,
8 to get everyone to sit down at the table and determine what you
9 felt you were willing to agree to, correct?

10 A. Correct.

11 Q. You and Jack Weichman are close friends, yes?

12 A. Yes.

13 Q. You have been close friends for decades?

14 A. Over 40 years.

15 Q. And as you sit here today testifying in his sentencing,
16 you would still consider yourself a close friend of
17 Jack Weichman?

18 A. I do.

19 Q. Someone you love?

20 A. Yes.

21 Q. You love him like a brother?

22 A. Yes.

23 Q. And you've told him and people in his office many times
24 that you love him like your brother and made statements,
25 general statements to the effect of, you know, what's mine is

1 his?

2 **A.** I don't know about that for sure. For the most part, I
3 would share a lot with him, but that statement sort of implies
4 that everything I have I would give to him, and that I would
5 not have done. I would still have to continue to take care of
6 myself and my family.

7 **Q.** But you made statements to the effect of, you know, Jack's
8 like a brother to me. You know, if he needs something, you
9 know, I'd be there for him?

10 **A.** That's correct.

11 **Q.** And you understand that you are here today because,
12 amongst other things, Diane Berkowitz would like to see
13 Mr. Weichman go to jail?

14 **MS. BERKOWITZ:** Your Honor, I'm going to object to
15 the characterization. I represent the United States.

16 **THE COURT:** Yeah, let's stop personalizing it. Just
17 rephrase the question.

18 **BY MR. GURLAND:**

19 **Q.** Do you want to see Jack Weichman go to jail?

20 **A.** No, I do not.

21 **Q.** Do you think that you'll benefit in any way if
22 Jack Weichman goes to jail?

23 **A.** I won't benefit by his going to jail in any way, no.

24 **Q.** Do you think his going to jail is going to harm you?

25 **A.** It possibly could.

1 Q. And Ms. Berkowitz brought up something about a recent
2 issue you had with your former partnership.

3 A. Yes.

4 Q. And she insinuated that Jack Weichman came to you and
5 raised that issue, but isn't it true that that first issue came
6 up -- or when that issue first came up, you were dealing with
7 your attorneys?

8 A. Correct.

9 Q. And your attorneys told you that you had a claim of about
10 \$140,000?

11 A. About, yes.

12 Q. And you made Jack Weichman aware of that, correct?

13 A. Yes.

14 Q. And it was only after all that had transpired with your
15 counsel that Mr. Weichman said, Oh, you may actually have a
16 larger claim, and you asked Jack -- you mutually agreed that he
17 would look into that for you?

18 A. That's correct.

19 Q. And Mr. Weichman actually determined that you have a claim
20 that's worth about three to \$4 million?

21 A. That's correct.

22 Q. And but for Jack Weichman, you wouldn't know about that,
23 you would have relied on your lawyers, and you might have
24 walked away with \$140,000 instead of potentially three or
25 \$4 million?

1 **A.** That's absolutely correct.

2 **Q.** And it wasn't something that Mr. Weichman thought up, an
3 idea he thought up and approached you in order to try to get
4 some benefit at sentencing. It is something that came up
5 because your attorneys brought it up and came to a
6 conclusion that --

7 **MS. BERKOWITZ:** Objection, Your Honor, as to the form
8 of that question.

9 **MR. GURLAND:** -- that wasn't satisfying to you?

10 **THE COURT:** What's the objection?

11 **MS. BERKOWITZ:** Form of the question. It is not
12 really a question.

13 **THE COURT:** Overruled.

14 **THE WITNESS:** You are right.

15 **BY MR. GURLAND:**

16 **Q.** Now, and I'll try and do this quickly, because we have
17 been through some of the deposition testimony, we have seen
18 some of the statements you've made, but you've testified
19 several times, 2005, 2014, and in the grand jury, regarding the
20 authority you did or didn't give to Mr. Weichman, correct?

21 **A.** Correct.

22 **Q.** And you have, under oath, made statements to the effect of
23 "I've given him money because he's a friend of mine"?

24 **MS. BERKOWITZ:** Your Honor, could we have a reference
25 by counsel?

1 **MR. GURLAND:** That references to the 2005 deposition,
2 page 51.

3 **Q.** You recall making statements like that?

4 **A.** Yes.

5 **Q.** Okay. And you recall making statements -- now I'm
6 referring to page 53 -- in response to the question "Have you
7 loaned money to Jack," saying, "I may have. He, like -- he has
8 access to my account."

9 **A.** Yes.

10 **Q.** You've said at numerous times that he has,
11 quote-unquote -- or had, quote-unquote, carte blanche over your
12 accounts?

13 **A.** I have made that comment, yes.

14 **Q.** And those are your words, not Jack's words, correct?

15 **A.** Right.

16 **Q.** There's been some discussion about a loan that
17 Mr. Weichman obtained for you in your name in 2002. Do you
18 recall that testimony?

19 **A.** I remember hearing about that, yes.

20 **Q.** And purportedly that was for working capital for
21 Broadmoor, according to the government?

22 **A.** That's what was said earlier today, yes.

23 **Q.** Okay. And you understand Jack was an investor in
24 Broadmoor at one point?

25 **A.** Yes.

1 Q. And Broadmoor, in fact, went belly-up before 2002. It
2 went belly-up in 2001. Do you recall that?

3 A. I don't remember when Broadmoor went belly-up.

4 Q. Do you recall that there was a time when you wanted to get
5 in on that investment and Jack actually advised you against
6 going into that investment?

7 A. That may very well be true, but I don't remember.

8 Q. And the loan that was obtained, if I could direct your
9 attention to Defendant's Exhibit 1 in front of you, you were
10 aware of the loan at the time it was obtained, is that not
11 true?

12 MS. BERKOWITZ: Your Honor, I think that
13 mischaracterizes the witness's earlier testimony.

14 THE COURT: Overruled.

15 THE WITNESS: With all due respect, I'm not sure I
16 even understand what's in this at this point, but that is my
17 signature.

18 BY MR. GURLAND:

19 Q. Okay. And when you are saying that's your signature, you
20 are referring to your signature on Defendant's Exhibit 1, which
21 is a June 24, 2002, letter of direction, correct?

22 A. Yes.

23 Q. And it is not a very complex document, is it?

24 A. For me, it is. I'm not sure I understand what it is.

25 Q. Well, there's two sentences in the entire document, right?

1 **MS. BERKOWITZ:** Your Honor, I think this question has
2 been asked and answered a few times now by the witness.

3 **MR. GURLAND:** I have never asked it.

4 **THE COURT:** Overruled.

5 **BY MS. BERKOWITZ:**

6 **Q.** There are two sentences in the document, correct?

7 **A.** But I don't understand much of what those two sentences
8 are saying.

9 **Q.** Can you read the second sentence, please?

10 **A.** "Assign a quarter of a million dollars principle of agency
11 account number 51542800 for commercial loan number 31725, dated
12 6/24/02, and any renewals thereof." I'm not sure what they
13 mean by assign.

14 **Q.** Okay. So you understand what the word "loan" means?

15 **A.** I understand what a loan is, yes.

16 **Q.** Do you understand what the word "commercial loan" means?

17 **A.** I assume it's as opposed to a personal loan.

18 **Q.** You know what 25 -- sorry, as you call it, a quarter of a
19 million dollars is, right?

20 **A.** Yes.

21 **Q.** And that's your signature, is it not?

22 **A.** Yes.

23 **Q.** Can I ask you to turn to the next document, please,
24 Defendant's Exhibit 2.

25 During the course of working with Weichman and Associates,

1 every year you were given a personal financial statement, were
2 you not?

3 A. Yes.

4 Q. And you signed off on those personal financial statements?

5 A. I did, yes.

6 Q. Nobody prevented you from reading them, did they?

7 A. Nobody explained them to me either.

8 Q. Defendant's Exhibit 2 is your August 2003 personal
9 financial statement, correct?

10 A. Yes.

11 Q. And it is signed by you, correct?

12 A. That's my signature.

13 Q. And if you look at the first page, under the column
14 "Liabilities" on the right, there's a note payable to the bank
15 for \$7400, and then there's a note payable for, roughly, a
16 quarter of a million dollars, right?

17 A. Right.

18 Q. If you turn to page 6, it is the page that's Bates stamped
19 at the top corner JW0025844. There's a list of creditors, and
20 one, two, three -- the third creditor down, it references an
21 account, personal, and roughly a quarter of a million dollars,
22 correct? It is actually \$245,700, and it indicates that the
23 highest balance in that account -- or that loan was \$250,000,
24 right?

25 A. The only part of the financial statements I've ever seen

1 before are the first two pages.

2 Q. Okay. And the first page referenced the liability; the
3 second page showed your signature, right?

4 A. Correct, but I've not seen the back pages before.

5 Q. Did anybody ever tell you you couldn't turn the page?

6 A. I was only presented the two pages. Not only that, I was
7 asked to sign the forms by one of Jack's employees, and I got
8 no explanation of what the financial statement actually meant.

9 Q. Could you turn to the next document, Defendant's
10 Exhibit 3, please. What's Defendant's Exhibit 3?

11 A. Assignment of investment properties and securities.

12 Q. Okay. And your initials appear at the bottom of page 1?

13 A. My initials appear at the bottom of each of the pages.

14 Q. And if you look at the very top, under "Assignment of
15 Investment Property Securities," it indicates that the date of
16 the assignment of securities is June 24, 2002, correct?

17 A. On what page -- oh, there it is.

18 Q. Right at the top.

19 A. I see it.

20 Q. It is the same time as the loan that was taken out in
21 2002, correct?

22 A. And it basically is exactly as I said earlier. A lot of
23 fine print, very small, difficult for me to understand. I
24 totally depended upon the advice of Jack or his representative
25 to both initial these pages and sign them.

1 Q. You signed them and you initialed them, right?

2 A. I did.

3 Q. Turn to the last page, please.

4 Is that your signature?

5 A. Yes, it is.

6 Q. Was it Jack or a member of his office who witnessed your
7 signature, or was it somebody else?

8 A. I don't know who witnessed the signature.

9 Q. There's a signature there, correct? It says "Witnessed
10 by."

11 A. Yes.

12 Q. And based upon the typing above the signature, it was
13 witnessed by Robert J. Scott, Senior Vice President, Senior
14 Trust Officer of Centier Bank, correct?

15 A. I see the printed Robert J. Scott. I can't read the
16 signature.

17 Q. Okay. Do you recall sitting with Mr. Scott and having him
18 witness your signature?

19 A. No.

20 Q. Do you deny that that happened, or you just don't recall?

21 A. I never met with a bank officer.

22 Q. Can you turn to Defendant's Exhibit 4, please.

23 Defendant's Exhibit 4 is another assignment of investment
24 securities. This one is dated April 27, 2006, correct?

25 A. Correct.

1 Q. And it also contains your signature, correct?

2 A. Correct.

3 Q. And then I'd ask if you can skip an exhibit and turn to
4 Defendant's Exhibit 6. Here we have another assignment of
5 investment property securities, correct?

6 A. Yes.

7 Q. This one is dated August 2nd, 2007, corresponding with
8 the \$500,000 line of credit, correct?

9 A. I don't see where the amount is on this.

10 Q. I was referring to the date.

11 A. Okay. It says August 2nd, 2007.

12 Q. Actually, I'm sorry, the amount is \$850,000. And it is
13 hard to read. It is under paragraph "Unsecured debts" on the
14 first page.

15 A. Even when I was younger, I would have had a hard time
16 reading that.

17 Q. If you could turn to the last page of that exhibit,
18 please.

19 Is that your signature?

20 A. That's my signature.

21 Q. And who witnessed that signature, according to the
22 document?

23 A. Looks like a Mr. Boyd.

24 Q. James -- is it James Boyd? Under that he wrote "vice
25 president," also "Centier Bank"?

1 A. Yes.

2 Q. You testified that the loans that Jack obtained for
3 Jalapenos were loans you found out about after the fact,
4 correct?

5 A. Correct.

6 Q. And that you ratified them, but only after the fact,
7 correct?

8 A. Correct.

9 Q. You also came to understand, at some point shortly after
10 you ratified them, that a security interest was given to you in
11 connection with the loans for Jalapenos?

12 A. You mean that I was given some value of Jalapenos in
13 exchange for this?

14 Q. No, that you were given a security interest in the
15 restaurant and the fixtures in the restaurant.

16 A. I became aware of that later, yes. Somewhere there is a
17 list of those fixtures.

18 Q. Can I ask you to turn your attention to Defendant's
19 Exhibit 7.

20 Is Exhibit 7 the note and security agreement that you were
21 given providing you collateral to secure the loan for
22 Jalapenos?

23 A. The only thing I recognize is the schedule of assets at
24 the end.

25 Q. Okay.

1 **A.** And that I have seen before.

2 **Q.** Okay. And what's -- is there a date on this agreement or
3 this -- sorry, this note and security agreement? If you could
4 look at the fourth page, the page right before the schedule of
5 assets.

6 **A.** 26th day of July, 2007.

7 **Q.** And that security agreement is signed by Ari Weichman, the
8 president of Jalapenos, correct?

9 **A.** Correct.

10 **Q.** Did you ever have any discussion with Ari about the
11 restaurant?

12 **A.** Never.

13 **Q.** Do you understand that Scott Yahne filed a UCC -- or made
14 a filing in order to secure, whatever the proper legal term is,
15 your interest in Jalapenos?

16 **MS. BERKOWITZ:** Your Honor, could we have a date when
17 this filing took place?

18 **THE COURT:** Do you know?

19 **THE WITNESS:** I don't know, no. I don't even know
20 what a UCC is.

21 **THE COURT:** Okay. Fair enough. Proceed.

22 **BY MR. GURLAND:**

23 **Q.** Let me direct your attention to Defendant's Exhibit A,
24 which is the UCC financing statement. Have you ever seen that
25 document before?

1 A. I don't believe so.

2 Q. Do you recall having a conversation with Mr. Yahne or
3 Mr. Weichman about the UCC filing at any time?

4 A. I don't remember a conversation with Scott about this, no.

5 Q. Let me direct your attention to Defendant's Exhibit 9
6 then.

7 Does that refresh your recollection?

8 A. I can attest to the fact it is my signature, but I don't
9 remember this document, no.

10 Q. And this is your signature on a letter of direction that
11 would at some point terminate the effectiveness of the
12 financing statement filed on your behalf, correct?

13 A. I'm sorry. I don't understand any of it.

14 Q. Do you remember having a conversation with Jack Weichman
15 about your security interest in the restaurant and if that is
16 something that happened to you Jack didn't want to be partners
17 with your family and the interest would cease to exist at that
18 time?

19 A. Vaguely.

20 Q. Okay. Let me direct your attention to the next exhibit,
21 which is Defendant's Exhibit 10.

22 What's Defendant's Exhibit 10?

23 A. It is another financial statement.

24 Q. Is it signed by you?

25 A. That's my signature, yes.

1 Q. And on the cover page it reports your financial condition
2 as of what date?

3 A. December 31, 2008.

4 Q. Which would be after the loans we just reviewed, loans
5 which you testified that you ratified and which you appear to
6 have had a security interest in, correct?

7 A. Yes.

8 Q. Okay. And look under the liability section, the top line.
9 Does it indicate what liability existed?

10 A. \$899,500.

11 Q. Okay. You know what a liability is, right?

12 A. It is something you are responsible for.

13 Q. You know what a loan is?

14 A. I think so.

15 Q. You know what a note payable to a bank is?

16 A. Yes.

17 Q. And you know what \$899,500 is, right?

18 A. Yes.

19 Q. And if you turn to your next personal financial statement,
20 Defendant's Exhibit 11, what date is Defendant's Exhibit 11?

21 A. One year later, December 31, 2009.

22 Q. Okay. And then the report of your financial condition as
23 of that date, what does it indicate that your notes payable to
24 banks or your liability to banks is?

25 A. \$928,300.

1 Q. And did you sign off on that?

2 A. I did.

3 Q. Sir, despite your vague recollection about the
4 conversation you had with Jack Weichman about the letter of
5 direction that you signed, is it fair to say that you have no
6 doubt that at least by 2008 you were aware of the fact that
7 there was an eight, \$900,000 liability in your name, which was
8 money Jack was using to run Jalapenos?

9 A. I think that's fair to say.

10 Q. Can I turn your attention, please, to the next exhibit.
11 It is Defendant's Exhibit 12, which is a letter to the Court
12 from Jennifer McGuire. Do you know who Jennifer McGuire is?

13 A. Yes, I do.

14 Q. How do you know her?

15 A. She has been an assistant to Jack in his office for very
16 many years, and she works with me with my business.

17 Q. Okay. Currently?

18 A. Currently and before.

19 Q. Do you trust her?

20 A. I do.

21 Q. According to her letter, she indicates that you have said
22 a number of times that you consider Jack to be part of your
23 family, like a brother. Is that true?

24 A. That's true.

25 Q. That you have said to Jennifer several times that Jack has

1 done so much for you and your family. Is that true?

2 A. That's true.

3 Q. That you have said that you feel you could never repay
4 Jack for all that he's done for you. Is that true?

5 A. That's probably true.

6 Q. That you have said, "What is mine is Jack's," or made
7 statements to that effect?

8 A. (No response.)

9 Q. Dr. Ashbach, I'm not asking you to testify that you gave
10 authorization to Jack to take money to go gambling or anything
11 like that, just that you made statements of this type to people
12 in his office.

13 A. I have. Yes, I have.

14 Q. Ms. McGuire makes reference to a meeting that you had with
15 her and someone else from Jack's office after you had met with
16 the government for the first time. Do you recall that meeting?

17 A. I do.

18 Q. Do you recall going back to Weichman and Associates and
19 taking some of Jack's employees out to the parking lot and
20 saying: We need to help Jack?

21 A. I believe I did do that. I don't remember, though, but I
22 have been told.

23 Q. Do you remember saying: We need to do everything possible
24 to keep Jack with us?

25 A. I would have said that, yes.

1 Q. Okay. And that is still a sentiment you share today?

2 A. Yes.

3 Q. The next exhibit, Defendant's Exhibit 13, is the next
4 letter that Ms. Einterz sent to the Court. We don't need to
5 read the letter, but there's similar statements in there,
6 Doctor, to the effect that you made general comments as, you
7 know, Jack can have what he needs or statements to that kind.
8 Did you make statements of that nature to Ms. Einterz?

9 MS. BERKOWITZ: Your Honor, this is hearsay.

10 THE COURT: Ms. Berkowitz, the rules of evidence
11 don't apply at this hearing.

12 Proceed, please.

13 BY MR. GURLAND:

14 Q. Have you made statements of that nature?

15 A. I would have made statements of that nature, but I would
16 not have made statements to the point where I was bankrupt as a
17 result of helping Jack.

18 Q. Understood. And, in fact, when you met with Mr. Kirsch
19 over a year ago in connection with this case, you, in fact,
20 pretty much said that to him. You said that you would be
21 willing to say on the stand that you were willing to let Jack
22 take what he needed, as long as he didn't leave you dry,
23 correct?

24 A. Correct.

25 Q. Did you make that statement?

1 A. I did.

2 Q. Did you tell that statement to Mr. Kirsch because that was
3 a true statement?

4 A. The statement is true. I don't remember saying it to
5 Mr. Kirsch, but the statement is true.

6 Q. I apologize. You said that to Mr. Pujols (phonetic).

7 A. All right. I can't remember for sure that I've ever met
8 Mr. Kirsch.

9 Q. Can I ask you to please read the first paragraph of the
10 second page of Ms. Einterz's letter?

11 A. Second page, first --

12 Q. The top -- the first paragraph on the second page of the
13 letter.

14 A. Out loud?

15 Q. Sure.

16 A. [As read:] "On both occasions that I was interviewed by
17 Ms. Berkowitz behind closed doors immediately prior to my grand
18 jury testimony, I told her that I did not believe that Jack
19 embezzled -- her words, not mine -- monies from Dr. Ashbach due
20 to the authority Jack was given by Dr. Ashbach and due to the
21 statements Dr. Ashbach had made to me describing his personal
22 and financial relationship with Jack.

23 "Ms. Berkowitz then began to threaten me telling me, I
24 know what you did, and just admit what you did (I didn't do
25 anything), and suggest that she was going to indict me as a

1 co-conspirator. She told me a story about a train going
2 through a station and said if I didn't get on the train with
3 them that I would go to jail with Jack. She said she would try
4 to revoke my CPA license."

5 Q. Now, the first time you met with Ms. Berkowitz you drove
6 back to Jack Weichman's office and took his employees out in
7 the parking lot and told them, pleaded with them, that they
8 needed to do something to help Jack, correct?

9 A. The timing may not be completely correct, but I did tell
10 them that we have to do what we can to help Jack.

11 Q. That was after a meeting with the government, correct?

12 A. Well, I wouldn't have done that if -- the only reason I
13 would have done that is because I would have known that Jack
14 was in trouble with the government.

15 Q. Did Ms. Berkowitz ever threaten you in any way?

16 A. I don't believe so, no.

17 Q. Did she ever pressure you in any way?

18 A. She has pressured me, yes.

19 Q. How has she pressured you?

20 A. She has said that the government is responsible for trying
21 to help me with restitution, and that if I -- if my testimony
22 wasn't in line, that there would be no restitution.

23 Q. If your testimony wasn't in line with what?

24 A. That if --

25 Q. I'm sorry, could you please answer the question. Do you

1 need it read back?

2 A. No, I don't. Basically, that I gave testimony before the
3 grand jury. If I reneged on that testimony, there would be no
4 restitution.

5 Q. Did she call you stupid?

6 A. She did not use that term ever, no.

7 Q. Did you tell Jack Weichman that Diane Berkowitz called you
8 stupid?

9 A. I don't remember saying that to Jack either. I know that
10 the government did not very well respect me for my lack of
11 knowledge about financial issues and that they didn't respect
12 me for my inability to handle this situation as it progressed
13 over the decades.

14 Q. Did Diane Berkowitz threaten you in any other ways with
15 regard to your personal life?

16 A. Not that I can recall.

17 Q. Did she make you tell your wife anything?

18 A. She recommended that I talk with my wife.

19 Q. Okay. What did she say to you specifically?

20 A. She told me that you would be telling the Court about my
21 infidelity if I didn't go home and tell my wife, because at
22 that point there was the possibility that my wife would be here
23 in the courtroom, and you can't very well consider it a threat
24 because that's exactly what you have done.

25 Q. You are referring to Melanie?

1 A. I'm referring to Melanie.

2 THE COURT: Who is Melanie?

3 THE WITNESS: Melanie is my girlfriend. I have a
4 wife and a girlfriend.

5 THE COURT: Okay. I wasn't tracking here.

6 BY MR. GURLAND:

7 Q. And with respect to your finances, you have several
8 different bank accounts, correct?

9 A. I had several different bank accounts, yes.

10 Q. When you were working with Weichman and Associates, you
11 had several different banking accounts, correct?

12 A. Correct.

13 Q. You had a banking account for your business that Jack
14 managed, correct?

15 A. Well, the business had a bank account.

16 Q. You had a separate account that was essentially set up so
17 you could deal with your personal financial matters that you
18 didn't want your family to know about, correct?

19 A. Correct.

20 Q. And the reason that those bank statements and other
21 financial papers came to Weichman and Associates was because
22 you didn't want them to go to your home, correct?

23 A. Correct.

24 Q. And you also had a third account for your personal family
25 matters, and that actually went to your home, correct?

1 A. Yes.

2 Q. Okay. And you had --

3 A. That had nothing to do with Jack.

4 Q. Right. And you handled that yourself?

5 A. Right.

6 Q. Right?

7 A. Correct.

8 Q. You had the sophistication that you could pay your own
9 bills and manage that bank account. You didn't need
10 Jack Weichman to do that for you, correct?

11 A. Correct.

12 Q. And you say that I outed you here today in court, but, in
13 fact, when we met with your attorneys a few weeks ago to do a
14 settlement agreement, you actually told me that in response to
15 Diane Berkowitz pressuring you you went home and told your wife
16 about Melanie, isn't that true?

17 A. That's true.

18 Q. So why did you just say under oath that I'm the one who
19 brought it out?

20 A. Because you did. Jack had told me that this wouldn't come
21 out in court, and it has.

22 Q. When we met in your attorney's office with Mr. Hyman,
23 Mr. Efron, Mr. Driscoll, Mr. Pinkerton, you also told us that
24 in the course of dealing with the government you gave them some
25 Blackhawk tickets, correct?

1 **A.** I do not recall giving Blackhawk tickets to the
2 government.

3 **Q.** Do you deny telling me in Mr. Pinkerton's presence and
4 Mr. Weichman's presence and Mr. Hyman's presence that you gave
5 Blackhawks tickets to the agents in this case?

6 **A.** I don't deny that.

7 **Q.** So you told that to me, correct?

8 **A.** I already answered that.

9 **THE COURT:** I guess what I'm asking, did you tell
10 Mr. Gurland that during this meeting?

11 **THE WITNESS:** I did.

12 **THE COURT:** Was that, in fact, true?

13 **THE WITNESS:** I thought it was.

14 **THE COURT:** Can you help me out with that one? Did
15 you dream it up or -- I don't understand what you mean "I
16 thought it was." You were under some mistaken belief that you
17 gave these guys hockey tickets?

18 **THE WITNESS:** I give away a lot of hockey tickets,
19 and I thought I had given hockey tickets to one of the agents.
20 I thought I had. He has refreshed my memory and told me that I
21 did not give him hockey tickets.

22 **THE COURT:** Okay. Fair enough. Proceed.

23 **BY MR. GURLAND:**

24 **Q.** Meaning you told one of the agents that you let us know
25 that you gave him hockey tickets, and he said, no, that's not

1 true, don't say that?

2 A. He said that I am mistaken, that I did not give him any
3 hockey tickets.

4 Q. Mistaken about something we discussed two weeks ago,
5 correct?

6 A. Correct.

7 Q. Okay.

8 A. But the event, if it had occurred -- there haven't been
9 hockey tickets in over two years. They are all electronic. So
10 the event would have occurred over two years ago.

11 So that would go back to my ability to remember whether he
12 was one of the people that I actually gave tickets to when he
13 says I didn't. I may have thought about doing it, but he says
14 I didn't do it.

15 Q. And the event that we're focused on here today, the
16 \$850,000 line of credit, that occurred a decade ago, correct?

17 A. Say that again.

18 Q. The event that your testimony has focused on for most of
19 the day today, which is this \$850,000 loan, that occurred a
20 decade ago, correct?

21 A. Yes.

22 Q. And it is fair to say you don't have a good memory of what
23 you signed or didn't sign or knew or didn't know a decade ago,
24 correct?

25 A. That's possible.

1 Q. Sir, do you recall being contacted by the bank in 2010
2 regarding a \$167,000 check written out to Ameristar Casino?

3 A. Yes.

4 Q. And do you recall approving that transaction?

5 A. I didn't approve that transaction, no.

6 Q. Do you recall the bank telling you in 2010 that there was
7 a \$167,000 check Jack had written for a casino?

8 A. There were multiple checks, all for \$10,000.

9 Q. And the bank, when they called you about those checks,
10 told you that the purpose of the check was to pay a casino,
11 correct?

12 A. They showed me the checks.

13 MS. BERKOWITZ: Your Honor, could we have a time
14 frame? Could counsel identify a time frame for the witness,
15 since there are two series of checks?

16 BY MR. GURLAND:

17 Q. Let me do it this way. Can I turn your attention,
18 Dr. Ashbach, to Defendant's Exhibit 14.

19 If you could look at the first page of Defendant's
20 Exhibit 14, it is a February 23, 2010, memo, interoffice memo
21 from the bank referencing the attached \$167,000 check. And
22 there's a handwritten notation on there dated February 23,
23 2010. It says, "Per conversation with Dr. Ashbach, okay to
24 honor check." Do you see that?

25 A. I see that.

1 Q. Okay. Do you recall discussing that transaction with the
2 bank in 2010?

3 A. I do not recall discussing that. I do not recall a check
4 for 167,000, and I did not authorize that.

5 THE COURT: Mr. Gurland, how much longer are you
6 going to have on cross do you think?

7 MR. GURLAND: Not much more.

8 THE COURT: Unfortunately, I have a doctor's
9 appointment. I've got to get out of here.

10 MS. BERKOWITZ: Your Honor, I anticipate some lengthy
11 redirect.

12 THE COURT: I figured as much.

13 MS. BERKOWITZ: Would it be a good time to take a
14 break now, because I know this witness has diabetes, so I'm
15 just concerned that maybe --

16 THE WITNESS: I'm okay.

17 THE COURT: How much longer do you think you have?

18 MR. GURLAND: Ten minutes at the most.

19 THE COURT: I'm going to give you 10 minutes.

20 MR. GURLAND: I'll keep to it, Your Honor.

21 BY MR. GURLAND:

22 Q. Dr. Ashbach, by the way, if you could look at the attached
23 check.

24 A. I did.

25 Q. Where it has your signature and Jack Weichman's signature,

1 is this the check you are referring to where Jack Weichman's --
2 I'm sorry, where it has your name printed and Jack Weichman's
3 name?

4 A. Yeah.

5 Q. His name isn't in larger letters, is it?

6 A. Yes, it is. But the one I remember seeing didn't look
7 like this.

8 Q. We can all look at it and make our own decision.

9 If you can turn your attention to Defendant's Exhibit 15
10 please, the next exhibit.

11 This is the settlement agreement that you went through
12 with Ms. Berkowitz?

13 A. Yes.

14 Q. And you indicated that you signed this agreement?

15 A. I did.

16 Q. That was on April 18th of this year?

17 A. Yes.

18 Q. And there's a signature under yours. Whose signature was
19 that?

20 A. My attorney, Mort Efron.

21 Q. And you were advised by counsel in connection with the
22 drafting of this agreement, the preparation and the entering
23 into this agreement?

24 A. Yes, I was.

25 Q. This, in fact, was something that you wanted to do,

1 correct?

2 **A.** It was advised by my lawyers that I do this.

3 **THE COURT:** Just for clarity's sake, we are talking
4 about Exhibit 15 right now?

5 **THE WITNESS:** Yes.

6 **MR. GURLAND:** Yes, Your Honor.

7 **BY MR. GURLAND:**

8 **Q.** I want to keep my commitment to the judge and end this in
9 the next nine minutes. You were also shown a letter by the
10 prosecutor. It was the letter that you wrote on Jack's behalf
11 in this case.

12 **A.** Yes.

13 **Q.** You're actually the physician for Jack's mother, correct?

14 **A.** Correct.

15 **Q.** And it is your opinion that if Jack's not present to take
16 care of her in the way that he has taken care of her in all
17 these years she'll probably die, correct?

18 **A.** That's my opinion. That's what I put in the letter.

19 **Q.** And it is your request, as stated in this letter, that
20 Jack not be incarcerated, correct?

21 **A.** That's my wish, yes.

22 **Q.** And you understand that you were the victim of a crime in
23 which Jack used money of yours to gamble, and you have forgiven
24 him for that, right?

25 **A.** I'm thinking about Melanie right now. But, yeah, it is

1 true.

2 Q. Don't hold it against me.

3 A. Well, who would I hold it against, if not you?

4 Q. You have forgiven him, correct?

5 A. I have forgiven him, not you.

6 Q. That's okay.

7 Sir, in the presentence report, with respect to the
8 account and the loan that was taken out in 2002, purportedly
9 for working capital for Broadmoor, there's no indication that
10 any of the money in that account was not used for you. Are you
11 aware of any of that money being used for anything other than
12 your own benefit?

13 A. I don't remember the loan. If the loan was taken for
14 Broadmoor, I don't know what that would have to do with me. I
15 don't know why you would think it would be for my benefit.

16 Q. Well, my understanding is that the money with respect to
17 that loan was used as working capital for you, and so --

18 MS. BERKOWITZ: Objection, Your Honor. This is
19 statements about something that's not even in evidence. I'm
20 not sure where --

21 THE COURT: Yes. Why don't you just ask him instead
22 of just --

23 BY MR. GURLAND:

24 Q. Are you aware of any misuse of that specific money? I'm
25 referring to the \$200,000 taken out in 2002.

1 A. What do you mean by misuse?

2 Q. Are you aware of it being used for any purpose other than
3 for you?

4 A. I thought that the loan was taken out for Broadmoor.

5 Q. Do you know what the money was, in fact, used for?

6 A. No, I have no idea.

7 Q. And do you know whether or not it was used for anything
8 other than your benefit?

9 MS. BERKOWITZ: Objection. Asked and answered now a
10 few times, Your Honor.

11 THE COURT: Overruled. Give him one last chance
12 here.

13 THE WITNESS: I can't answer anything about that
14 money. I don't remember that money being used for me.

15 BY MR. GURLAND:

16 Q. Okay. It also indicates that the loan -- that only
17 nominal interest payments were made on the loan, and it was
18 never paid back. Do you know if that is true or false?

19 A. I was told that that loan was totally paid back, and I was
20 told that by Centier Bank.

21 Q. And that was my understanding as well.

22 A. And that was just a couple weeks ago.

23 Q. And I asked that because I was understanding -- I was
24 wondering why the --

25 I thought the presentence report had an incorrect

1 statement in it, and that was the clarification I was looking
2 for.

3 **MR. GURLAND:** I have nothing else, Your Honor.

4 **THE COURT:** We're going to break. And,
5 unfortunately, you are going to have to come back on Monday.
6 We are going to start at 10 o'clock. So I ask you to be here
7 by about 10 minutes to 10, okay. We will pick back up with the
8 re-examination at that time.

9 So other than finishing Dr. Ashbach, we have to hear from
10 Hatagan and then another agent?

11 **MS. BERKOWITZ:** Visalli and then Jamie Dow,
12 Your Honor, based on evidence that was presented today.

13 **THE COURT:** Okay. Have them all here ready to go
14 right at 10 so we can get through this.

15 (A recess was had at 4:07 p.m.)

16 * * *

17 **CERTIFICATE**

18 I, Stacy L. Drohosky, certify that the foregoing is a true
19 and correct transcript from the record of proceedings in the
20 above-entitled matter.

21 Date: August 8, 2018

22 S/Stacy L. Drohosky
23 S/STACY L. DROHOSKY
24 Court Reporter
25 U.S. District Court

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